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THE

Law of Tythes.

DIGESTED ON AN ENTIRE NEW PRACTICAL PLAN.

For the Uſe of

The COUNTRY GENTLEMAN, PARSON, FARMER, or whom elſe it may concern.

In which is comprehended,

All the STATUTES, ADJUDGED CASES, RESOLUTIONS, and JUDGMENTS in EQUITY, and in the ECCLESIASTICAL COURTS relating thereto.

By JOHN PAUL, Eſq; Barriſter at Law.

LONDON:
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ADVERTISEMENT.

THE following ſheets are compiled for the particular uſe and ſervice of the country gentleman, parſon, farmer, and all others that are or may become intereſted in the paying or collecting of the different ſpecies of tythes as by law they are now ſettled and aſcertained.

The Editor has entirely diveſted the preſent Treatiſe of thoſe long, tedious, and declamatory arguments of the Counſel and Civilians on the nature, claſs, and diſtinction of tythes, with which almoſt all other works on this ſubject are ſo uſeleſsly enveloped. Here will be found the eſſence of every thing that has been judicially determined on this head, great part of which has hitherto lain diſperſed

perſed and unnoticed in a variety of ſtatutes, equity and eccleſiaſtical decrees and ordinations.

The tythe law has for ages paſt been a ground of conſtant litigation between individuals, ſometimes to the total ruin of themſelves, their families, and fortunes; and where this has not been the caſe, it has raiſed a ſpirit of diſſention that never after could be entirely allayed.

This work is offered as an humble attempt to remove that evil. It will be found to contain a more comprehenſive, yet ſimple and explicit definition of the law of tythes, than in any book now extant, and in a ſtile and manner ſuited to thoſe who are not read in the law, as well as thoſe who are.

The article of Agiſtment of Cattle is here alſo inveſtigated, and finally determined, from a caſe in point lately decreed in the Court of Exchequer. No perſon can now poſſibly err in this branch of the

tythe

tythe law, who will give himſelf the trouble to peruſe this pamphlet.

But if he is inclined to conſult a very full and accurate account and hiſtory of the caſe above alluded to, namely, the caſe of Bateman againſt Aiſtrop and others, determined in the Court of Exchequer, April 28th 1774, he is referred to an excellent treatiſe on Agiſtment Tythe, by the Rev. Thomas Bateman, Chaplain to his Grace the Duke of Gordon, and Vicar of Whaplode, Lincolnſhire.

If the intelligence here given is found uſeful and ſatisfactory to thoſe who have occaſion to conſult the ſubject for practical uſe, the Editor's wiſh and deſign is fully accompliſhed.

OCTOBER 1, 1781.

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THE

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THE Law of Tythes.

CHAP. I.

Of Parſons and Vicars—What they are—Qualifications neceſſary for thoſe functions—How and by whom created—What is a temporary, and what a total Incapacity—Appropriations, what they are—Advowſons, what—Their different Kinds, and how they operate—A Rectory or Parſonage explained—Of Vicarages, and their Endowments.

A PARSON, i. e. *perſona eccleſiæ*, is one that hath full poſſeſſion of all the rights of a *parochial* church. He is ſo called, becauſe in his perſon the church, which is an inviſible body, is repreſented. He has, during his life, the freehold in himſelf of the *parſonage houſe*, *the glebe*, *the tythes*, and *other dues*. At the firſt eſtabliſhment of *parochial* clergy, tythes were divided into *four* parts, viz. *one* for the uſe of the Biſhop, *another* for the maintaining the fabric of the church; a *third* for the poor, and the *fourth* to provide for the incumbent. Biſhops having ſince been otherwiſe amply provided for, they are now prohibited from demanding their uſual ſhare of tythes. *Vide Co. Litt. p.* 300. A parſon, what he is.

An appropriation, what conſtitutes the ſame.

Glebe tythes, &c. are ſometimes *appropriated*, *that is*, the benefice is perpetually annexed to ſome ſpiritual corporation, either *ſole* or *aggregate*, being the patron of the living, whom the law eſteems equally capable of providing for the ſervice of the church as any ſingle private clergyman. In order to complete *an appropriation*, the King's licenſe, and conſent of the Biſhop muſt be firſt obtained, becauſe they at ſome time or other may have an intereſt by *lapſe* in the preſentation to the benefice, which cannot happen if it be appropriated to the uſe of a corporation, which never dies. The conſent of the patron is in this caſe neceſſarily implied, becauſe the appropriation can be originally made to none but to ſuch ſpiritual corporation as is patron of the church, the whole being a licenſe for the patrons to retain the *tythes* and *glebe* in their own hands, without preſenting any clerk, they undertaking to provide for the ſervice of the church. An appropriation ſo created, the appropriators and their ſucceſſors are perpetual parſons of the church, and muſt ſue, and be ſued in all matters concerning the rights of the church, by the name of *parſons*. *Vide Plowd. p.* 496. & 500, *Hob. p.* 307.

Appropriations may be ſevered two ways, and the church become *diſappropriate*. The firſt is, if the patron or appropriator preſents a clerk who is inſtituted and inducted to the parſonage; for the perſon ſo inducted is to all intents and purpoſes *complete parſon*. Appropriations ſevered can never be re-united again, unleſs by a repetition of the ſame ſolemnities. The *clerk* ſo preſented is diſtinct from the *vicar*; the *rectory* thus veſted in him becomes what is called a *ſine-cure*, becauſe he hath no cure of ſouls, having a vicar under him, to whom that cure is committed. If the corporation, which has the appropriation, is diſſolved, the parſonage becomes diſappropriate at *common law*, becauſe the perpetuity of perſon is gone, which is neceſſary to ſupport the appropriation. *Vide Co. Litt. p.* 46. 2. *Burn. Eccl. Law. p.* 347.

In this manner, and ſubject to theſe conditions, may appropriations be made at this day: and thus were moſt, if not all, of the appropriations at preſent exiſting

ing originally made; being annexed to biſhopricks, prebends, religious houſes, nay, even to nunneries, and certain military orders, all of which were ſpiritual corporations. At the diſſolution of monaſteries by *ſtatutes* 27. *Hen.* 8. *c.* 28. and 31 *Hen.* 8. *c.* 13. the appropriations of the ſeveral parſonages, which belonged to thoſe reſpective religious houſes, (amounting to more than *one-third* of all the pariſhes in *England*) would have been by the rules of the *common law* diſappropriated, had not a clauſe in thoſe ſtatutes intervened, to give them to the king in as ample a manner as the *abbots*, &c. formerly held the ſame at the time of their diſſolution. *Vide Seld. Review of Tythe, cap.* 9. *Spelm. Apology, p.* 35.

Appropriating corporations, or religious houſes, uſed formerly to depute one of their own body to perform divine ſervice, and adminiſter the ſacraments in thoſe pariſhes of which the ſociety was *parſon*. This officiating miniſter was in reality no more than a *curate deputy*, or vicegerent of the appropriator, and called *vicarius*, or *vicar*. His ſtipend was at the diſcretion of the appropriator, who was, however, bound of *common right* to find ſomebody for that ſervice. It being done in ſo ſcandalous a manner, and the pariſhes ſuffered ſo much by the neglect of the appropriators, that the *legiſlature* was forced to interpoſe. And by *ſtatute* 15 *Rich.* 2. *c.* 6. enacted, that in all appropriations of churches, "the dioceſan biſhop ſhall ordain "(in proportion to the value of the church) a compe-"tent ſum to be diſtributed among the poor pariſhi-"oners annually; and that the vicarage ſhall be ſuf-"ficiently endowed." It ſeems the pariſh were frequently ſufferers, not only by the want of divine ſervice, but alſo by withholding thoſe alms for which, among other purpoſes, the payment of *tythes* was originally impoſed; and therefore, in this act a penſion is directed to be diſtributed among the poor *parochians*, as well as a ſufficient ſtipend to the *vicar*. He being liable to be removed at the pleaſure of the appropriator, was not likely to inſiſt too rigidly on the legal ſufficiency of the ſtipend. To remedy which, by *ſtatute* 4 *Hen.* 4. *c.* 12. "It was ordained, that the vicar "ſhall be a *ſecular* parſon, not a member of any reli-

" gious houſe; that he ſhall be vicar perpetual, not " removeable at the caprice of the monaſtery; and " that he ſhall be *canonically* inſtituted and inducted, " and be ſufficiently endowed, at the diſcretion of the " ordinary, for theſe three expreſs purpoſes, to do " *divine ſervice*, to *inform the people*, and to *keep hoſpi-* " *tality*." The endowments made in conſequence of theſe *ſtatutes* have uſually been by a portion of the *glebe*, or land, belonging to the parſonage, and a particular ſhare of the *tythes*, which the appropriators found it moſt troubleſome to collect, and which are therefore generally called *privy* or *ſmall tythes*; the greater, or *predial tythes*, being ſtill reſerved to their own uſe. This rule was not obſerved in the endowment of all vicarages. Some are more liberally, and ſome more ſcantily, endowed; the *tythes* of many things, as *wood in particular*, are in ſome pariſhes *rectorial*, and in ſome *vicarial tythes*. *Vide Seld. Tythes, cap.* 11. 1.

Diſtinction between a parſon and vicar.

The diſtinction of a *parſon* and *vicar* is: The parſon has, for the moſt part, the whole right to all the *eccleſiaſtical dues* in his pariſh: A *vicar* has generally an appropriator over him, who is entitled to the beſt part of the profits, to whom he is, in effect, no more than *perpetual curate*, with a ſtanding ſalary. In ſome places the vicarages have been conſiderably augmented by a large ſhare of the *great tythes*; which augmentations were greatly aided by *ſtatute* 29 *Car.* 2. *c.* 8. enacted in favour of *poor vicars* and *curates*, which rendered ſuch temporary augmentations (when made by the appropriators) perpetual.

To conſtitute a *parſon* or *vicar*, there are *four* requiſites neceſſary, viz. *holy orders*, *preſentation*, *inſtitution*, and *induction*. By the *common law*, a deacon, of any age, might be inſtituted and inducted to a *parſonage* or *vicarage*. By *ſtatute* 13 *Eliz. c.* 12. it was enacted, " that no perſon under *twenty-three* years of age, and " in deacon's orders, ſhould be preſented to any " benefice with cure; and if he were not ordained " prieſt within *one year* after his induction, he ſhould " be *ipſo facto* deprived." By *ſtatute* 13 *and* 14 *Car.* 2. *c.* 4. " no perſon is capable to be admitted to any " benefice unleſs he hath been firſt ordained a prieſt;"

" and

and then he is, in the language of the law, a clerk in orders. If he obtains orders, or a licenſe to preach, by money or corrupt practices, the perſon giving ſuch orders forfeits *forty pounds*; and the perſon receiving *ten pounds*, and is incapable of any *eccleſiaſtical* preferment for *ſeven years* afterwards. *Vide Burn. Eccl. Law, vol. 2. p.* 103.

A clerk may be preſented to a *parſonage* or *vicarage*; that is, the patron, to whom the advowſon of the church belongs, may offer his clerk to the biſhop of the dioceſe to be inſtituted. When a clerk is preſented, the biſhop may refuſe him on many accounts. *Firſt*; if the patron is *excommunicated*, and remains in contempt *forty days*. *Secondly*; if the clerk be unfit; which unfitneſs is of ſeveral kinds. *Firſt*, with regard to his perſon; as if he be a *baſtard*, an *outlaw*, an *excommunicate*, an *alien under age*, or the like. Next with regard to his *faith* or *morals*, as for any particular hereſy, or vice that is *malum in ſe*: but if the biſhop alleges only in *generals*, as that he is *ſchiſmaticus inveteratus*, or objects a fault that is *malum prohibitum* merely, as haunting taverns, playing at unlawful games, or the like, it is not good cauſe of refuſal. *Laſtly*; the clerk may be unfit to diſcharge the *paſtoral* office for want of learning. In any of which caſes the biſhop may refuſe the clerk. In caſe the refuſal is for hereſy, ſchiſm, inability of learning, or other matter of *eccleſiaſtical* cognizance, there the biſhop muſt give notice to the patron of ſuch his cauſe of refuſal, who, being uſually a *layman*, is not ſuppoſed to have knowledge of it, elſe he cannot preſent by *lapſe*: but if the cauſe be *temporal*, there he is not bound to give notice. *Vide Burn, vol.* 1. *p.* 103. 2 *Roll. Abr. p.* 355. *Glanv. lib.* 13. *cap.* 20. 2 *Roll. Abr. p.* 356. 2 *Inſt. p.* 632. *ſtat.* 3 *Rich.* 2 *cap.* 3. 7 *Rich.* 2. *cap.* 12. 5 *Rep.* 58. 2 *Inſt.* 632. A clerk, how preſented.

If an action at law be brought by the patron againſt the biſhop for refuſing his clerk, the biſhop muſt aſſign the cauſe. If the cauſe be of a *temporal* nature, and the fact admitted, (as, for inſtance, *outlawry*) the judges of the King's courts muſt determine its validity, or whether it be ſufficient cauſe of refuſal: but if the

fact be denied, it must be determined by a *jury*. If the cause be of a *spiritual* nature, (as heresy, particularly alleged) the fact, if denied, shall also be determined by a *jury*; and if the fact be admitted or found, the court, upon consultation, and advice of learned divines, shall decide its sufficiency. If the cause be want of learning, the Bishop need not specify in what points the clerk is deficient, but only allege that he is deficient; for *stat.* 9 *Edw.* 2. *st.* 1. *c.* 13. is express, that the examination of the fitness of a person presented to a benefice belongs to the *ecclesiastical* judge; but because it would be nugatory in this case to demand the reason of refusal from the ordinary, if the patron were bound to abide by his determination, who has already pronounced his clerk unfit; therefore, if the Bishop returns his clerk to be *minus sufficiens in literatura*, the court shall write to the *metropolitan* to re-examine him, and certify his qualifications; which certificate of the *Archbishop* is final. *Vide* 2 *Inst. p.* 632. 5 *Rep.* 58. 3 *Lev.* 313.

On institution, the clerk may enter on the *parsonage house* and *glebe*, and take the *tythes*, but he cannot grant or let them, or bring an action for them till induction. *Vide Black. Com. vol.* 1. *p.* 200.

The different kind of advowsons.

An advowson is the right of presentation to a church or *ecclesiastical* benefice. There are three kinds of advowsons, viz. *presentative*, *collative*, or *donative*; when *presentative*, the patron hath a right of presentation of a clerk to the Bishop or ordinary, if *canonically* qualified; *collative* is where the Bishop and patron are one and the same person; *donative* is when the King or any subject by his license doth found a church or chapel, and ordains that it shall be merely in the gift or disposal of the patron, subject to his visitation only, and not to that of the ordinary, and vested absolutely in the clerk by the patron's deed of donation, without presentation, institution, or induction. These advowsons have all tythes annexed to them, and are usually paid to the officiating ministers, which before were given to the clergy in common. *Vide Co. Litt. p.* 119. *Ibid.* 121. *Ibid.* 307. *Ibid.* 120.

A rectory

A rectory or parſonage is a *ſpiritual living*, compoſed of *land*, *tythes*, and *other oblations* of the people, ſeparate or dedicate to God in any congregation for the ſervice of his church there, and for the maintenance of the governor or miniſter thereof, to whoſe charge the ſame is committed. *Vide Spel. head De non temerandis Eccleſias, p.* 1. *Degge's Parſon's Counſellor, cap.* 13. *page* 190. A rectory or parſonage, what.

A rectory or parſonage uſually conſiſts of glebe land and tythes, with the offerings, yet it may be a rectory though it have no glebe but the church and churchyard: and in *London*, and other great towns and cities, there may neither be glebe nor tythes, but annual payments and offerings in lieu thereof. *Ibid.*

By grant of rectory, all the glebe tythes and offerings paſs. *Ibid.*

A *vicarage* is a cantel or portion of the rectory, ſet out by the patron, parſon, and ordinary, for the maintenance of a perpetual vicar, who, as vicegerent of the parſon, hath the cure of the ſouls within the pariſh where he is vicar. A vicarage may conſiſt of land or tythes alone, or of glebe tythe, offerings, or in an annual penſion, without glebe or tythes; and ſuch penſions have been limited by ſeveral *canons*. *Vide Degge's Par. Counſ. p.* 191. A vicarage, what.

Vicarages are in general indowed with glebe and tythes. *Ibid.*

Indowments of vicarages are always conſtrued in law favourably to the vicar, eſpecially where the cure of ſouls is annexed. *Ibid. p.* 194.

CHAP. II.

Tythes, what they are—Their general operation and names.—How divided—What will alter the cuſtomary and uſual diviſion of Tythes—To whom extraparochial Tythes belong—To whom Tythes are due in particular caſes.

Tythes, what they are.

TYTHES, by the beſt law, and *eccleſiaſtical* authorities, are *defined* to be the *tenth* part of the increaſe yearly ariſing, and renewing from the profits of lands, the ſtock upon lands, and the perſonal induſtry of the inhabitants, payable towards the maintenance of a pariſh prieſt, by every perſon who hath any thing tytheable in the pariſh, unleſs he can ſhew ſome *ſpecial* exemption therefrom, as will be ſhewn hereafter. They are properly due to ſuch clergy that have the cure of ſouls in the pariſh where they ariſe. *Vide Black. Com. vol. 2. p. 24. Wood's Inſt. p. 161. 2 Rep. 411. 4 Rep. 13, 14. Degge Parſons Coun. p. 214.*

How claſſed.

Tythes are uſually claſſed under three heads, viz. *predial, mixed,* and *perſonal.*

Predial tythes.

Predial tythes are ſuch as ariſe merely and immediately from the ground; as, for example, *grain of all ſorts, hay, wood, fruits, herbs. Vide Black. Com. vol. 2. p. 24.*

Mixed tythes.

Mixed tythes ariſe not immediately from the ground, but from things immediately nouriſhed by the ground, as by means of goods depaſtured thereupon, or otherwiſe nouriſhed with the fruits thereof, as *all ſheep, all beaſts,* and *horſes, heifers, ſteers, colts, fillies, chickens, milk, cheeſe, eggs.* The depaſturing cattle of all ſorts is called the *tythe of agiſtment,* that is, the *tenth* part of the value of the keeping or depaſturing ſuch cattle. *Ibid.*

Note. *It has been lately determined in the Exchequer, that agiſtment tythes are due ſo often as there is an increaſe of profit from the land. Ibid. and Caſe in Exchequer, Eaſter Term,* 1774. *Bateman v. Aiſtrup, &c.*

Perſonal

Perſonal tythes are ſuch profits as do ariſe by the honeſt labour and induſtry of man, employing himſelf in ſome perſonal work, artifice, or negotiation, being the *tenth* part of the clear gain, after charges and expences, according to a perſon's eſtate, condition, or degree, are deducted. *Ibid.* Perſonal tythes.

By *ſtat.* 2 *and* 3 *Edw.* 6. *cap.* 13. *ſect.* 7. IT IS ENACTED, That every perſon exerciſing merchandizes, bargaining and ſelling, clothing, handicraft, or any other art or faculty, being ſuch perſons, and in ſuch places as within theſe *forty years* have uſed to pay perſonal tythes, or of right ought to pay, other than ſuch as the common day-labourers, ſhall yearly, at or before *Eaſter*, pay for his perſonal tythes, the *tenth* part of his clear gains; his charges and expences, according to his eſtate or degree, to be deducted.

Sect. 8. In all ſuch places where handicraftſmen have uſed to pay their tythes within theſe forty years, the ſame cuſtom ſhall continue. *Ibid.*

Sect. 9. If any perſon refuſe to pay his perſonal tythes, it ſhall be lawful to the ordinary of the dioceſe where the party is dwelling, to call the party before him, and examine him, by all lawful means, other than by the party's oath, concerning the payment of the perſonal tythes. *Ibid.*

Tythes, with regard to value, are divided into *great* and *ſmall: great tythes*, as *corn*, *hay*, and *wood*. *Vide Degge Paſt.* 2. *cap.* 1.

Small tythes, as the *predial* tythes of other kinds, together with thoſe which are called *mixt* and *perſonal*. *Vide Gibſ. Cod.* 663.

This manner of dividing tythes may be altered *by cuſtom*, which will make *wood* a *ſmall tythe*, under the general words of *minutæ decimæ*, in the endowment of the vicar. *Vide* 4 *Mod. p.* 184.

The law ſeems now ſettled, that tythes are to be denominated *great* or *ſmall tythes*, according to the *nature*

nature and *quality* thereof, and not according to the *quantity*. *Anon.*

Extraparochial tythes.

Tythes extraparochial, or within the compaſs of no certain pariſh, belong to the crown. By the *canon law* they were to be diſpoſed of at the diſcretion of the Biſhop; but by the law of *England*, all extraparochial tythes, as in ſeveral foreſts, do belong to the King, and may be granted to whom he will; he being deemed a mixed perſon, and capable of tythes at *common law* in *permanency*, and in conſequence they have been adjudged to him, not only by ſeveral reſolutions of law, but alſo in parliament. *Vide Seld. Hiſtory Decim. p.* 365. 10 *Hen.* 7. *cap.* 18. *Co.* 5. *part* 128.

By *ſtat.* 2 *Edw.* 6. *cap.* 13. *ſect.* 3. IT IS ENACTED, "That every perſon which ſhall have any beaſts or "cattle tytheable, depaſturing on any waſte or common "ground, whereof the pariſh is not certainly known, "ſhall pay their tythes for the increaſe of the ſaid "cattle to the parſon, owner, or their farmers, of the "pariſh or place where the owner of the ſaid cattle "inhabiteth."

SECT. 4. "No perſon ſhall be ſued or compelled "to pay tythes for any lands, which by the laws of "this realm, or by any privilege or preſumption, "are not chargeable with ſuch tythes, or that be diſ-"charged by any compoſition real."

To whom tythes are due in particular caſes.

If a parſon leaſe his *glebe lands*, and in ſuch leaſe doth not alſo grant the tythes thereof, the tenant ſhall pay the parſon tythes. *Vide Degge Par. Coun. p.* 226.

The ſame law holds if an *impropriator vicar*, &c. make leaſes. *Vide Hetly, p.* 31.

The parſon ſhall have tythe of his own tenant, ſo he ſhall have of his *feoffee*. If he hath lands in the ſame pariſh whereof he is parſon, and demiſes his tythes, he ſhall pay tythes to his leſſee. *Vide Co.* 1—111. *a. Cro. El.* 261.

If

If a parſon ſow his ground, and then ſell the *emblements*, i. e. *the corn growing on the ground*; the buyer of the corn ſhall pay the tythe of it to the parſon that ſowed and ſold the corn. *Vide Dyer*, 43. *p.* 21.

By *ſtat.* 28. *Hen.* 8. *cap.* 11. all tythes and other profits belonging to a rectory are given to the ſucceſſor from the death of the late incumbent.

Note. Notwithſtanding the foregoing ſtatute, the law ſeems clear, that the executor of the parſon ſhall have the corn ſown by his teſtator in his life-time as the executors of other tenants for life have by the law. *Vide Rolls*, 655. *K.* 3.

It is ſettled on *ſtat.* 28. *Hen.* 8. That if the parſon, vicar, &c. ſow the land, and be deprived, reſign, or accept another living, the ſucceſſor ſhall have the tythe.

It hath been held, that the vicar, upon a general indowment, ſhall not pay tythe for his glebe to the parſon on the fruits ariſing therefrom, without ſpecial words in ſuch indowment. *Vide More*, *p.* 910. *and* 457.

If a vicar be endowed of all the *ſmall tythes* ariſing within the pariſh, yet he ſhall not have the ſmall tythes ariſing upon the glebe lands of the parſon. *Vide Winch. p.* 70.

Tythes by *preſcription* may be *appendant* on an ancient chapel. *Vide More*, *p.* 457——910.

By the *canon law*, *perſonal* tythes are to be paid where the party communicates, but *predial* to the parſon within whoſe pariſh the land lies. *Vide Decret. Greg. de decim. cum ſunt Gloſſ.*

Note. In general, tythes are to be paid for every thing that yields an annual increaſe, as *corn*, *hay*, *fruit*, *cattle*, *poultry*, and the like, but not for any thing that is of the ſubſtance of the earth, or is not of annual increaſe, as *ſtone*, *lime*, *chalk*, and the like, nor for creatures that

that are of a *wild nature*, or *feræ naturæ*, as *deer*, *hawks*, &c. whoſe increaſe, ſo as to profit the owner, is not *annual*, but *caſual*. *Vide Black. Com. vol.* 2. *p.* 24.

The foregoing rule admits of ſome exception: for example, tythe is due of *ſaffron*, though gathered but once in *three years*; ſo of *ſylva cædua*, or wood of *twenty years* growth. *Vide Gibſ. p.* 669.

By the *canon law*, if ſeeds be ſown on the ſame ground, and renew oftener than once in the year, the tythes thereof ſhall be paid ſo often as they do renew. The *common law* holds, that *de jure* tythes are due of the *aftermath*, if not exempted by *preſcription:* And by a late determination in the Exchequer, all tytheable matters are ſubject to tythe as often as they yield a profit to the owner in the year. *Vide Gibſ. p.* 633. 1 *Roll. Abr. p.* 640. *Caſe in Exchequer, Bateman v. Aiſtrup.*

Things deemed feræ naturæ.

By the *common law*, fiſh taken out of the ſea, or out of a river, are not ſubject to tythe, unleſs by *cuſtom*, as in *Wales*, *Ireland*, *Yarmouth*, and other places; nor of *conies*, or the like; but if the tythe thereof be due by *cuſtom*, it muſt be paid. *Vide Gibſ. Cod. p.* 669. *Degge*, *p.* 2. *c.* 8. 2 *Inſt. p.* 651.

Quarries.

Of *common right*, no tythes are to be paid of *quarries* of *ſtone* or *ſlate*, for that they are parcel of the freehold; and the parſon hath tythes of the graſs or corn which grew upon the ſurface of the land in which the quarry is; ſo alſo, not for *coal*, *turf*, *flag*, *tin*, *lead*, *brick*, *tile*, *earthen pots*, *lime*, *marle*, and ſuch like, becauſe they are not the increaſe, but of the ſubſtance of the earth, and the like. *Vide* 2 *Inſt. p.* 651. *Gibſ. Cod. p.* 669. *Mod. Rep. p.* 908. *Cro. Eliz. p.* 277.

Foreſt lands.

Lands which are *extraparochial* pay tythes to the King; ſo lands lying within the precincts of a *foreſt*, (though alſo in a pariſh) if they be in the hands of the King, do pay no tythes; and this privilege extends to the King's *leſſee*, but not to his *feoffee*. If the foreſt be diſafforeſted, and be within any pariſh, then they ought

ought to pay tythes into the hands of the King's leſſee. *Vide Boh. p.* 163. 177. *Gibſ. Cod.* 680.

Parks.

It ſeems doubted, where a park hath paid a *modus*, and is diſparked, whether the *modus* ſhall continue or be diſcharged, and tythes paid in kind; all the authorities ſeem clear, that if the *modus* was a certain conſideration in money for all the tythes of ſuch a park, ſuch *modus* ſhall continue, notwithſtanding it be diſparked. If the *modus* was for the *deer* and *herbage* of ſuch a park, the *modus* is loſt on the ſame being diſparked, becauſe there being no park, there can be no deer kept there. *Vide Gibſ. Cod. p.* 684. *Watſ. cap.* 47.

If the *modus* had been to pay a *buck* and a *doe* in lieu of the tythes of ſuch a park, and the park is diſparked, the *modus* ſhall continue, and the owner may give a *buck* and a *doe* out of another *park*; but if it was to pay the *ſhoulder* of every *deer*, or particularly a *buck* or a *doe* out of the ſame park, the *modus* is loſt. *Ibid.*

Where the *modus* was, part in *money*, and part in *veniſon*, out of the park, (namely, *two ſhillings*, and the *ſhoulder* of every *deer*) on ſpecial argument, the court was divided, *two* being of opinion that the *two ſhillings* continued, and that the *ſpiritual court* ſhould aſſign an equitable recompenſe for the *ſhoulders*, according to the number that had been uſually paid; and the the other *two*, that the *money* and *veniſon*, making one entire *modus*, the *one* being gone, the *whole* was diſſolved. *Ibid.*

Ancient demeſne.

It has been determined, that the King is not, by virtue of his prerogative, diſcharged of tythes for *ancient demeſnes* of the crown, but that as *perſona mixta*, i. e. *a mixed perſon*, he is capable of a diſcharge *de non decimando*, by *preſcription*, as well as a *Biſhop*. If the King *alien* any of the lands for which he is ſo diſcharged of tythes, his *patentee* ſhall pay tythes; and the *preſcription* is thereby deſtroyed for ever, although the ſame lands ſhould afterwards come into the King's hands again by *eſcheat* or otherwiſe. *Vide Hard. p.* 315. *Mich.* 14. *Car.* 2.

By

Barren land.

By *ſtatute of* 2 *and* 3 *Ed.* 6. *c.* 13. *ſect.* 5. "All ſuch "barren heath or waſte ground, other than ſuch as "be diſcharged from the payment of tythes by ſtatute, "which before the paſſing this law have lain barren, "and paid no tythes, by reaſon of the ſame barren-"neſs, and now be, or hereafter ſhall be improved "and converted into *arable* ground or *meadow*, ſhall, "after the end and term of *ſeven years* next after ſuch "improvement is fully ended and determined, pay "tythe for the *corn* and *hay* growing upon the ſame."

Sect. 6. PROVIDED, "That if any ſuch barren, "waſte, or heath ground hath before that time been "charged with the payment of any tythes, and the "ſame be hereafter improved or converted into *arable* "ground or *meadow*; the owner thereof ſhall, dur-"ing the *ſeven years* next after the ſaid improve-"ment, pay ſuch kind of tythe as was paid for the "ſame before the ſaid improvement."

Sect. 5. *After ſeven years.* "Here are no expreſs "words of diſcharge of the tythes during the *ſeven* "*years*, though by the reaſonable conſtruction it is "implied, and amounts to a diſcharge during the "*ſeven years* which are to be accounted to commence "immediately next after the improvement."

Barren. If it doth yield ſome fruit, and do pay tythes for *wool* and *lamb*, or the like, yet if it be barren land, as to agriculture or tillage, which this clauſe evidently meant to advance, it is within the act.

If the ground be not ſuited for tillage, yet if it be not in its own nature barren, it is not within the meaning of the ſtatute. For example, if a wood be ſtubbed and grubbed, and made fit for the plough, and employed thereunto, yet it ſhall pay tithes preſently; for woody ground is in its nature fertile, and not barren. *Vide* 2 *Inſt. p.* 656. *Bunb. p.* 159.

Land only is conſidered as barren land that before the ploughing produced no profit to the owner. *Vide Frem. Reports*, 335. *pl.* 416. *Mich.* 1698. *in Scacc. Anon. Bendl.*

Bendl. 8. *pl.* 122. 2 *Eliz. S. P. and ſo held at common law.*

Waſte ground is ſuch ground as no man claims for his own, or no man can tell to whom it certainly belongs, and lies unincloſed and unbounded with hedge or ditch; but ground that lies incloſed, and hedged and ditched in, ſo that the land is known, cannot be deemed waſte ground. *Vide Bendl.* 80. *pl.* 122. 2 *Eliz. Anon. S. C. cited D.* 170. *b. Marg. pl.* 5. Waſte ground.

Heath ground is ſuch ground as is diſperſed, and lies in common. *Ibid.* Heath ground.

Where land be full of *thorns* and *buſhes*, from time whereof, &c. and it is grubbed up and made *meadow* or *arable* land, tythes ſhall be preſently paid thereof, notwithſtanding *ſtat.* 2 *and* 3 *Ed.* 6. *c.* 13. for thoſe lands were not naturally barren, but became ſo by *negligence* or *ill huſbandry*, and the ſtatute extended only to barren land made good by induſtry. *Vide Cro. Eliz.* 475. *pl.* 3.

Fenny land, afterwards drained, is not exempted by the act. Fenny land.

Land which bears *broom* is not within *ſtatute* 2 *Edw.* 6. for it is not *barren land*, and therefore if converted into *arable*, ſhall be chargeable with tythe. *Vide Roll. Rep. p.* 39.

If a man, at a great expence, gains land from the *ſea*, which before was marſhy and ſandy land, and covered with ſalt-water, and afterwards converts it into arable land, he ſhall pay tythes preſently, becauſe this land is not barren of its own nature, but only by accident, by reaſon of the ſand and ſalt-water overflowing it. *Vide Bluſt. vol.* 3. *p.* 156.

If ſheep are kept on barren land, whereby it yields any profit to the owner, this makes it tytheable, and ſuch tythe ought to be paid within the *ſeven years*. *Vide Lit. Rep. p.* 311.

Barren

Barren lands to be exempted from tythes within the true meaning of *ſtat.* 2 *Edw.* 6. muſt be ſuch land as is barren, *ſuapte natura*, and on ſuggeſtion for a prohibition to a ſuit for tythes of ſuch land, it muſt be alleged to be barren, *ſuapte natura*. *Vide* 2 *Raym. p.* 991.

As to a *modus* or *cuſtomary* payment in lieu of tythes, it appears, that where *commons* are *divided*, *incloſed*, and *improved*, the *modus* can refer only to ſuch tythes as the *common* yielded before its *improvement* and *diviſion* into *ſeveralties*; as or the *agiſtment* of *cattle*, *wool*, and *lamb*, or ſuch like; and not to the tythes of *corn*, *hay*, or other tythes accruing *de novo*, after the improvement. Where there is a *modus* in lieu of all the tythes of ſuch an eſtate, it appears that ſuch *modus* ſhall cover the *common appurtenant* to ſuch eſtate, when *divided* into *ſeveralties* and *incloſed*. *Vide B. Eccl. Law, p.* 388.

Note. *In ſtat.* 2 *and* 3 *Edw.* 6. *c.* 13. *ſect.* 6. *there are no expreſs words of diſcharge of the tythes during the* ſeven years, *yet, by reaſonable conſtruction, it amounts to a diſcharge during the* ſeven years; *and the* ſeven years *are to be accounted next after the improvement*. *Vide* 2 *Inſt. p.* 656.

On a trial at law, whether lands are *barren* or not, within the meaning of the ſtatute, muſt be had in the *temporal*, and not in the *ſpiritual* court; for in a ſuit for tythes in the *ſpiritual* court, if the defendant pleads that it is *barren land*, and that plea be refuſed, or iſſue taken upon it, there a prohibition ſhall be granted; but a prohibition ſhall not be granted upon a ſuggeſtion only that it is *barren land*, before it be pleaded in the *ſpiritual* court. *Vide Degge, p.* 2. *C.* 19. 1 *Keb. p.* 253.

Glebe land.

Glebe is a portion of land, meadow, or paſture, belonging to, or parcel of, the *parſonage* or *vicarage*, over and above the tythes. *Vide Godol. Rep. p.* 409.

If a parſon ſow his glebe, and dieth before the ſeverance, and afterwards his ſucceſſor is inducted, and his

his executor or vendee severeth the corn, the succeſſor ſhall have the tythe thereof; for although the executor repreſent the perſon of the teſtator, yet he cannot repreſent him as a parſon, inaſmuch as another is inducted. *Vide Degge, p.* 2. *c.* 2. 1 *Roll Abr. p.* 655.

If the parſon dieth after ſeverance from the ground, and before the corn is carried off, in this caſe the ſucceſſor ſhall have no tythe, becauſe, though it was not ſet out, yet a right to it was veſted in the deceaſed parſon by the ſeverance from the ground. The ſame doctrine holds in caſe of *deprivation* or *reſignation* after glebe ſown: the ſucceſſor ſhall have the tythe, if the corn was not ſevered at the time of his coming in, but not if ſevered. *Vide Gibſ. p.* 662.

By the *ſtat.* 31 *H.* 8. *c.* 13. *ſect.* 21. IT IS ENACTED as followeth, viz. "Where divers abbots, priors, and "other eccleſiaſtical governors of the monaſteries, "abbathies, priories, nunneries, colleges, hoſpitals, "houſes of friars, and other religious and eccleſiaſtical "houſes and places diſſolved by this act, have had "divers parſonages appropriated, tythes, penſions, and "proportions, and alſo were acquitted and diſcharged "of the payment of tythes for their monaſteries, or "other religious and eccleſiaſtical houſes and places "as aforeſaid, manors, meſſuages, lands, tenements, "and hereditaments, it is enacted, That as well the "King, our Sovereign Lord, his heirs and ſucceſ-"ſors, as all other perſons, their heirs and aſſigns, "who ſhall have any of the ſaid monaſteries, abba-"thies, priories, nunneries, colleges, hoſpitals, houſes "of friars, or other eccleſiaſtical houſes or places, "ſites, circuits, precincts of the ſame, or any of "them, or any manors, meſſuages, parſonages, ap-"propriate, tythes, penſions, portions, or other heredi-"taments, which belonged to any ſuch religious houſe, "ſhall hold and enjoy, as well the ſaid parſonages, "appropriate, tythes, penſions, and portions of the "ſaid monaſteries, abbathies, priories, nunneries, col-"leges, hoſpitals, houſes of friars, and other religious "and eccleſiaſtical houſes and places, ſites, circuits, "precincts, manors, meſſuages, lands, tenements, "and other hereditaments, according to their eſtates

" and titles, discharged and acquitted of payment of " tythes, as freely, and in as large and ample manner " as the said late abbots, priors, and other ecclesiast- " tical governors, held and enjoyed the same."

Note. *For a table of monasteries dissolved by the above statute, see end of the Book.*

CHAP.

CHAP. III.

Of exemption from payment of tythes by modus, cuſtom, and preſcription, &c.

THERE are various ways whereby abbey-lands are holden diſcharged of tythes, as *compoſition*, *bull* or *canon*, *order*, *preſcription* of *diſcharge*, and *unity* of poſſeſſion of parſonage and land, time out of mind, &c. The various means of exemption.

FIRST, a *real compoſition* is when an agreement is made between the owner of the lands and the parſon or vicar, with the conſent of the ordinary and the patron, that ſuch lands ſhall for the future be diſcharged from payment of tythes, by reaſon of ſome land or other, real recompenſe given to the parſon, in lieu and ſatisfaction thereof. This was countenanced by law, ſuppoſing that the clergy would be no loſers by ſuch compoſition; ſince the conſent of the ordinary, whoſe duty it is to take care of the church in general, and of the patron, whoſe intereſt it is to protect that particular church, were both made neceſſary to render the compoſition effectual; and hence aroſe all ſuch compoſitions as exiſt at this day by force of the *common law*. But experience ſhewing that even this caution was ineffectual, and the poſſeſſions of the church being by this and other means every day diminiſhed, the diſabling *ſtatute* 13 *Eliz. c.* 10. was made, which prevents, among other ſpiritual perſons, all parſons and vicars from making any conveyances of the eſtates of their churches, other than for *three lives* or *twenty-one* years. So that now, by virtue of this ſtatute, no *real compoſition* made ſince the 13 *Eliz.* is good for any longer term than *three lives*, or *twenty-one* years, though made by conſent of the patron and ordinary; which has indeed effectually demoliſhed this kind of traffic; ſuch compoſitions being now rarely heard of, unleſs Real compoſition.

by authority of parliament. *Vide Blackſton, vol. 2. p.* 28.

Cuſtom or preſcription.

SECONDLY, a diſcharge by *cuſtom* or *preſcription*, is where time out of mind ſuch perſons or ſuch lands have been, either partially or totally, diſcharged from the payment of tythes. And this immemorial uſage is binding upon all parties, as it is in its nature and evidence of univerſal conſent and acquieſcence, and with reaſon ſuppoſes a real compoſition to have been formerly made. This *cuſtom* or *preſcription* is either *de modo decimandi*, or *de non decimando*. *Ibid.* 29.

A modus,

A *modus decimandi*, commonly called by the ſimple name of a *modus* only, is where there is by *cuſtom* a particular manner of tything allowed, different from the general law of taking tythes in kind, which are the actual *tenth* part of the annual increaſe. This is ſometimes a pecuniary compenſation, as *two-pence* an acre for the tythe of land: ſometimes it is a compenſation in work and labour, as that the parſon ſhall have only the *twelfth* cock of hay, and not the *tenth*, in conſideration of the owner's making it for him: ſometimes in lieu of a large quantity of crude or imperfect tythe, the parſon ſhall have a leſs quantity, when arrived to greater maturity, as a couple of fowls in lieu of tythe eggs; and the like. Any means, in ſhort, whereby the general law of tything is altered, and a new method of taking them is introduced, is called a *modus decimandi*, or ſpecial manner of tything.

What makes a good modus.

To make a good and ſufficient *modus*, the following rules muſt be obſerved; *Firſt*, It muſt be certain and invariable, for payment of different ſums will prove it to be no *modus*, that is, no original *real compoſition*, becauſe that muſt have been one and the ſame, from its firſt original to the preſent time; *Secondly*, The thing given, in lieu of tythes, muſt be beneficial to the parſon, and not for the emolument of third perſons only; thus, a *modus* to repair the church in lieu of tythes is not good, becauſe that is an advantage to the pariſh only; but to repair the chancel is a good *modus*, for that is an advantage to the parſon; *Thirdly*, It muſt be ſomething different from the thing compounded for:

one

one *load* of *hay*, in lieu of all *tythe hay*, is no good *modus*: for no parſon would *bona fide* make a compoſition to receive leſs than his due in the ſame ſpecies of tythe; and therefore the law will not ſuppoſe it poſſible for ſuch compoſition to have exiſted. *Fourthly*, One cannot be diſcharged from payment of one ſpecies of tythe, by paying a *modus* for another. Thus, a *modus* of *one penny* for every *milch-cow* will diſcharge the *tythe of milch kine*, but not of *barren cattle*: for tythe is, of *common right*, due for both; and therefore a *modus* for one ſhall never be a diſcharge for the other; *Fifthly*, The recompenſe muſt be in its nature as durable as the tythes diſcharged by it; that is, an inheritance certain; and therefore a *modus* that every inhabitant of a houſe ſhall pay *four pence* a year, in lieu of the owner's tythes, is no good *modus*; for poſſibly the houſe may not be inhabited, and then the recompenſe will be loſt. *Sixthly*, The *modus* muſt not be too large, which in law is called a *rank modus*: as if the real value of the tythes be *ſixty pounds per annum*, and a *modus* is ſuggeſted of *forty pounds*; this *modus* will not be good, though one of *forty ſhillings* might have been valid. For, in theſe caſes of *preſcriptive* or *cuſtomary moduſes*, the law ſuppoſes an original *real compoſition* to have been regularly made; which being loſt by length of time immemorial, uſage is admitted as evidence to ſhew that it once did exiſt, and that from thence ſuch uſage was derived. Now, time of memory hath been long ago aſcertained by the law to commence from the reign of *Richard the Firſt*; any cuſtom may be deſtroyed by evidence of its *non*-exiſtence in any part of the long period from his days to the preſent; wherefore, as this real compoſition is ſuppoſed to have been an equitable contract, or the full value of the tythes at the time of making it, if the *modus* ſet up is ſo rank and large, as that it beyond diſpute exceeds the value of the tythes in the time of *Richard the Firſt*, this *modus* is *felo de ſe*, and deſtroys itſelf. For, as it would be deſtroyed by any direct evidence to prove its *non* exiſtence at any time ſince that *æra*, ſo alſo it is deſtroyed by carrying in itſelf this internal evidence of a much later original. *Vide* 1 *Keb.* *p.* 602. 1 *Roll. Abr.* *p.* 649. *Lev.* *p.* 179. *Cro. Eliz.* *p.* 446. *Salk.* *p.* 657. 2 *Peer Williams*, 462. 11 *Mod.* 60.

A preſcription for not paying tythes.

A *preſcription de non decimando* is a claim to be entirely diſcharged of tythes, and to pay no compenſation in lieu of them. Thus, the King by his prerogative is diſcharged from all tythes. So a vicar ſhall pay no tythes to the rector, nor the rector to the vicar, for *eccleſia decimas non ſolvit eccleſiæ*. Theſe perſonal privileges (not ariſing from, or being annexed to, the land) are perſonally confined to both the King and the clergy; for their tenant or leſſee ſhall pay tythes, though in their own occupation their lands are not generally tytheable. It is an eſtabliſhed rule, that in lay hands, *modus de non decimando non valet*. *Spiritual* perſons or corporations, as monaſteries, abbots, biſhops, and the like, were always capable of having their lands totally diſcharged of tythes, by various ways; *Firſt*, by *real compoſition*; *Secondly*, by the *Pope's bull* of exemption; *Thirdly*, by *unity of poſſeſſion*; as when the rectory of a pariſh, and lands in the ſame pariſh, both belonged to a religious houſe, thoſe lands were diſcharged of tythes by this unity of poſſeſſion; *Fourthly*, by *preſcription*; having never been liable to tythes, by being always in *ſpiritual* hands; *Fifthly*, by *virtue of their order*, as the *knights templars*, *ciſtercians*, and others, whoſe lands were privileged by the Pope with a diſcharge of tythes. On the diſſolution of abbeys by *Henry* VIII. moſt of theſe exemptions from tythes would have fallen with them, and the lands become tytheable again, had they not been ſupported and upheld by *ſtatute* 31 *Hen.* 8. *c.* 13. which enacts, "That all perſons who ſhould come to the poſſeſſion "of the lands of any abbey then diſſolved, ſhould "hold them free and diſcharged of tythes, in as large "and ample a manner as the abbeys themſelves for-"merly held them." And from this original have ſprung all the lands, which, being in lay hands, do at preſent claim to be tythe free: for if a man can ſhew his lands to have been ſuch abbey-lands, and alſo immemorially diſcharged of tythes by any of the means before mentioned, this is now a good *preſcription de non decimando*. But he muſt ſhew both the requiſites: for abbey-lands, without a ſpecial ground of diſcharge, are not diſcharged of courſe; neither will any *preſcription de non decimando* avail in total diſcharge of tythes, unleſs

leſs it relates to ſuch abbey-lands. *Vide Cro. Eliz.* 479. 511. *Hob.* 309. *Cro. Jac. p.* 308.

It muſt be obſerved, that there is a difference between *cuſtom* and *preſcription*; *cuſtom* is that which gives right to a *province*, *county*, *hundred*, *city*, or *town*, and is common to all within the reſpective limits. *Vide Gibſ. p.* 673.

Preſcription gives a right to ſome particular *houſe*, *farm*, or *other thing*. *Ibid.*

Cuſtom and *preſcription* are either *de non decimando*, or *de modo decimandi*. *De non decimando* is to be free from the payment of tythes, without any recompenſe for the ſame. Concerning which, the general rule is, that no layman can preſcribe in *non decimando*, that is, to be diſcharged abſolutely of the payment of tythes, and to pay nothing in lieu thereof, unleſs he begin his preſcription in a religious or *eccleſiaſtical* perſon, and derive a title to it by act of parliament. But all *ſpiritual* and religious perſons, as *biſhops*, *deans*, *prebends*, *parſons*, *vicars*, (as heretofore abbots and priors) may preſcribe generally in *non decimando*, for they are more favoured than lay perſons; for this is ſtill in a ſpiritual perſon, and ſo nothing is taken from the church; for ſuch *ſpiritual* perſon was capable of a grant of tythes at the *common law* in *permanancy*. Hence it is, that the parſon or vicar of one pariſh, that hath part of his glebe lying in another pariſh, may preſcribe in *non decimando* for it, that is, to be free from the payment of any manner of tythe for the ſame. *Vide Roll. Abr. p.* 653. *Gibſ. Cod. p.* 674.

The diſtinction between cuſtom and preſcription.

This general rule, that none but *ſpiritual* perſons or corporations may preſcribe in *non decimando*, is to be underſtood with ſeveral exceptions.

FIRST; That the King as being *mixta perſona*, i. e. a *mixed perſon*, may preſcribe *de non decimando*; that as ſuch he is capable of tythes. *Vide Gibſ. Cod. p.* 674. *Jones W. p.* 387. *Mo. p.* 483.

Who are exempt from tythes.

SECONDLY; That the leſſee, tenant at will, and copyholder of a *ſpiritual* perſon, though a *layman*, ſhall,

in this reſpect, enjoy the exemption of the leſſor, who is ſuppoſed to reap the benefit of it, in reſerving ſo much the greater rents, by reaſon of ſuch exemption. *Vide* 1 *Roll. Abr. p.* 653. *Degge, p.* 2. *c.* 16. 2 *Rep.* 78. 1 *Leon. p.* 248. 1 *Cro. p.* 785.

THIRDLY; That a county, or part of a county, may well plead a cuſtom *de non decimando*, in reſpect of this or that particular tythe; as hath been pleaded and allowed in the caſe of *tythe milk of ewes*; and of *tythe of underwood* in the wild of *Kent*, and in *forty pariſhes* in the wild of *Suſſex*. A ſingle pariſh may not preſcribe *de non decimando* for particular tythes; nor may any larger diſtrict plead a cuſtom, abſolutely to have their lands freed from the payment of all tythes, without any thing in lieu. And leſt this allowance of a *cuſtom, de non decimando*, to laymen, in any caſe, ſhould ſeem to break in upon the general rule, the diſtinction which hath been laid down is this: That in things tytheable by *cuſtom* only, and not *de jure*, a county or hundred may preſcribe in *non decimando* generally; for in that caſe they are diſcharged, without a cuſtom to the contrary; ſo that it is but to inſiſt on the old right, againſt which the cuſtom hath not prevailed; but for things which are tytheable *de jure*, a county or hundred cannot preſcribe in *non decimando* no more than a particular perſon; for it would be abſurd to ſay, that a hundred ſhall preſcribe in *non decimando*, where the particular perſons of which it conſiſts cannot ſo preſcribe. *Vide* 2 *Salk. p.* 655. *Lord Raym. p.* 187. *Gibſ. Cod. p.* 674. 1 *Roll. Abr. p.* 653, 654.

It was long a queſtion, whether a lay impropriator, as well as a clergyman, be intitled to recover the tythes, without proving payment; or whether a *non decimando* may be pleaded againſt a lay impropriator; but was at laſt determined, That a lay impropriator is under no neceſſity of proving payment of tythes unto him. *Vide Bumb. p.* 274.

It has been determined in the *Exchequer*, that there can be no *preſcription* in *non decimando* againſt a *lay rector* any more than againſt a *ſpiritual rector*; and that they are equally entitled to tythes of *common right*; and that it is ſufficient for a lay rector to ſet forth in a bill

a bill brought, that he is ſeiſed of the impropriate rectory; and if he maketh out his title to that, it will be ſufficient, without putting him to the proof of having received tythes. *Vide Bumb. p.* 325.

If a vicar ſue for tythes, and the pariſhioner, being a layman, denies that the ſaid tythes are due to him, in ſuch a caſe, unleſs the vicar ſhall prove that the tythes in queſtion are due to him by *endowment* or *preſcription*, he ſhall fail in his ſuit: the reaſon is, becauſe all the tythes *de jure*, or in preſumption of law, belong to the rector, and therefore the vicar ſhall receive only thoſe tythes which he enjoys by *cuſtom* or *preſcription*, or by the *endowment*. *Vide Ough. Ord. Judg. p.* 264.

Explanation de modus decimandi.

A *modus decimandi* is, when lands, tenements, or hereditaments, have been given to the parſon and his ſucceſſors, or an annual certain ſum, or other profit, always, time out of mind, to the parſon and his ſucceſſors, in full ſatisfaction and diſcharge of all the tythes in kind of ſuch a place. It may be pleaded by the lord of a manor for the tythes of his manor, on account of lands of the gift of one who was lord of the manor, and held by the parſon and his ſucceſſors, time out of mind; and by a pariſh or hamlet, for this or that ſort of tythe, by reaſon of lands enjoyed by the parſons time out of mind, within ſuch pariſh or hamlet; and LASTLY, by any private perſon for his own lands, or part thereof, in conſideration of a certain ſum of money, or other recompenſe. *Vide Gibſ. Cod. p.* 674. *Degge, p.* 2. *c.* 16. 3 *Cro. p.* 587.

What makes a good cuſtom or preſcription.

To make theſe a good *cuſtom* or *preſcription*, it muſt have the ſeveral qualifications following: As firſt; every *modus* muſt be ſuppoſed to have had a reaſonable commencement, and in every *preſcription de modo decimandi*, it is to be intended the rate tythe was the full value of the tythe at the time of the original compoſition; for it cannot be preſumed that the *biſhop*, *patron*, and *ordinary*, would make a compoſition to the prejudice of the church; and if the *modus* do not now reach the value, it is to be intended that either the tythes are improved, or elſe that money is now become of leſs value, which makes the preſent inequality. *Vide Degge, p.* 2. *c.* 16.

A compoſition real, what it is.

By *compoſition real* is meant where the preſent incumbent of any church, together with his patron and ordinary, do agree by deed under their hands and ſeals, or by fine in the King's court, that ſuch lands ſhall be freed and diſcharged of the payment of all manner of tythes for ever, paying ſome annual payment, or doing ſome other thing to the eaſe, profit, or advantage of the parſon or vicar to whom the tythes did belong. Theſe *real compoſitions* have ever been held and allowed here in *England* to be a good diſcharge of the payment of tythes. From theſe all *preſcriptions de modo decimandi* firſt took their riſe and beginning; ſince the *ſtatute* 1 *Eliz.* (in the caſe of *archbiſhops* and *biſhops*) and *ſtatute* 13 *Eliz.* (in the caſe of all other *eccleſiaſtical coroporations*, *ſole* and *aggregate*) it is agreed, that no *real compoſitions*, any more than *alienations*, can be made; ſince all grants are thereby expreſsly reſtrained and made void, which are not according to the tenor of theſe ſtatutes. And the only *modus* that can grow now, muſt be from the inadvertency of the clergy, acquieſceing in the ſelf-ſame agreements, from one ſucceſſor to another. *Vide Gibſ. p.* 675, 676.

Where a *real compoſition* hath been made, if the lands diſcharged thereby be transferred or granted to another, the feoffee or grantee ſhall have the benefit of it. *Ibid. Jones W. p.* 369.

It is neceſſary to ſhew that the *modus* had at firſt a reaſonable commencement; for theſe *moduſes* having been from time immemorial, none can know but there were ſuch circumſtances in thoſe *ancient* times as might have made ſuch a compoſition reaſonable, though at preſent they may not be diſcoverable. It is enough to ſatisfy us, at this great diſtance of time, that the *parſon*, *patron*, and *ordinary*, before the *reſtrictive ſtatutes*, might bind the revenues of the parſon; and that all theſe *moduſes* muſt have had their commencement from an inſtrument ſigned by the *parſon*, *patron*, and *ordinary*; but there can be no colour to ſay that, becauſe ſuch inſtrument in ſo great a length of time hath been loſt, there the *modus* ſhall be loſt alſo. Indeed, ſo far

the law hath gone in favour of the church, as that if the inſtrument which the *parſon*, *patron*, and *ordinary* had given to a layman, owner of ſuch a farm, to diſcharge the farm of all tythes, (though this would be good while the inſtrument could be ſhewn) ſhould be once loſt, this being a privilege in *non decimando*, the privilege would be loſt by the loſs of the deed. *Vide* 2 *P. Will. p.* 573. *Gibſ. Cod. p.* 675.

The *modus* muſt be ſomething for the benefit and intereſt of the parſon, and therefore the finding *ſtraw* for the body of the church; the finding a *rope* for a *bell*; the paying *five ſhillings* to the pariſh clerk; the paying a *quit-rent* to the lord of the manor; when theſe have been urged as diſcharges from tythes in kind, the *moduſes* have been held not to be good. *Vide Degge, p.* 2—16. *Gibſ. Cod. p.* 674. *Marſh.* 65—91. 1 *Leon.* 94. *Siderf. p.* 259.

The *modus* muſt not be one tythe paid in conſideration of another; as it muſt not be to pay tythes of other kinds to be diſcharged of tythes for *dry cattle*; it muſt not be ſo much for every *cow* and *calf* for the tythe of *herbage*. *Vide Gibſ. Cod. p.* 574. *Degge, p.* 2. *c.* 16.

A *modus* muſt alſo be ſomething in its kind different from the thing that is due; and therefore a *load of hay* in lieu of *tythe hay*, or certain *ſheaves of corn* for all tythes of *corn*, is not a *good preſcription*; but it hath been ſaid that this holds only in caſe the things are *de jure* tytheable, and not by *cuſtom* only. *Vide Degge, p.* 2. *c.* 2. *Gibſ. Cod. p.* 675.

A *modus* muſt be certain, and if it is uncertain, no length of time will make it good. For example, a *preſcription* to pay a *penny*, or thereabouts, for every acre of *arable land*, is void for the uncertainty. *Vide* 2 *P. W. p.* 572.

Many *moduſes* have been ſet aſide in regard that no day of payment was ſet forth by the defendant. *Vide caſe Whitehall and Offley, Trin.* 5 *Geo.*

In

In the caſe of *Goddard, rector of Caſtle-Eaton in Wilts, v. Kable*, the defendant inſiſted upon ſeveral *moduſes*, viz. *three-pence* for a *milk-cow*, *three-pence* for a *lamb*, *three-pence* for a *colt*, *one penny* for a *garden*, and the like; but they were all ſet aſide, in regard no time for the payment thereof was aſcertained by the defendant. *Vide Eaſter* 8 *Geo. Goddard v. Kable.*

The general maxim on which a modus is determined.

The maxim theſe decrees go upon is, that tythes in kind being a proviſion made by law for the clergy, which become due at a certain determinate time, and which, if not then ſet forth, are immediately demandable, ſhall not be taken from them by an uncertain payment, which becomes due on no determinate day, and which they cannot know when to demand, or go about to receive, if it be withheld. Beſides, that ſuch uncertainty lays a foundation for many diſputes. *Vide* 2 *B. Eccleſ. L.* 395.

A *modus* muſt be *ancient*, and therefore, if it is any any thing near the preſent value of the tythe, it will be ſuppoſed to be of late commencement, and for that reaſon will be ſet aſide, as in the caſe of *Benſon, impropriator of Bromley St. Leonard, Middleſex, againſt Watkins and others. H.* 3 *Geo.* the following *modus*, viz. *five ſhillings an acre* for tythe of *winter corn*; *four ſhillings an acre* for *ſummer corn*; *two ſhillings and ſixpence an acre* for *upland meadow*; and *three ſhillings an acre* for *low land*, were ſet aſide as too big.

A *modus* muſt be ſomething durable, becauſe the tythe in kind is an inheritance certain, and it is againſt nature that it ſhould be extinguiſhed by a recompenſe not as durable at leaſt, though not ſo valuable; for this reaſon, *four-pence* to be paid yearly by two perſons inhabiting two ſuch houſes, in conſideration of all tythes, hath been adjudged ill, becauſe the houſes may decay, or none live in them. *Vide Gibſ. Cod. p.* 675. 1 *Cro. p.* 139.

Cuſtom or *preſcription* muſt be conſtant, without interruption, and perpetual, from the time whereof the memory of man is not to the contrary; for if there had been frequent interruptions, there can be no *cuſtom* or

preſcription

preſcription obtained; when ſuch *cuſtom* or *preſcription* is obtained, a diſturbance for *ten* or *twenty years* ſhall not deſtroy it. *Vide Degge, p.* 2. *c.* 13.

What conſideration will create a modus.

It is not every conſideration that will make a good *modus*, ſo a *modus*, though founded upon a good conſideration, may be ſeveral ways diſcharged, and tythes become due in kind: (1.) Where land is converted to other uſes; ſo when the *preſcription* is for *hay* and *graſs*, eſpecially in ſo many acres of land, if the *land* is converted into *hop-garden* or *tillage*, the *preſcription* is gone. (2.) By the alteration or deſtruction of the thing for which the money was paid; as where *two fulling-mills* were under the ſame roof, and turned into a *corn-mill*; where alſo there was *one pair of ſtones in a mill*, and another pair was added; and where the *water-courſe* was altered by the owner, and the *mill* was pulled down and re-edified upon it; in all theſe caſes it has been *adjudged*, that the *modus* was gone. Where a man was ſeiſed of *eight acres of meadow*, and *one of paſture*, for the tythes whereof he had paid, time out of mind, *five ſhillings and four-pence*, and afterwards the owner built a *corn-mill* upon the ſame, it has been *adjudged*, that he ſhould pay no other tythes for the *corn-mill*, becauſe the land was diſcharged by the *modus*. 2 *Inſt.* 490. *Gibſ.* 675. 1 *Roll. Abr.* 651. (3.) By *non-payment* of the conſideration, or payment of tythes in kind, for ſo long a time, as to deſtroy the poſſibility of making proof that ſuch cuſtom or preſcription was: but an interruption for ſome ſhort time only will not diſcharge it, eſpecially if made by the leſſee to the prejudice of the leſſor. *Vide Watſ. c.* 47. *Gibſ. Cod. p.* 675. 2 *Bulſt. p.* 240.

The rule is, that the *modus* is to be ſued for in the *eccleſiaſtical* court, as well as the very tythe; and, if it be allowed between the parties, they ſhall proceed there; but if the *cuſtom* be denied, it muſt be tried at the *common law*; and if it be found for the *cuſtom*, then a conſultation muſt go, otherwiſe the prohibition ſtandeth. The like is affirmed, in caſe a jury, upon an iſſue joined in a prohibition upon a *modus decimandi*, find a different *modus*: ſince a *modus* is found, they ſhall

ſhall not have a conſultation. *Vide* 2 *Inſt. p.* 490. *Gibſ. Cod. p.* 691.

Reaſons why courts of law prohibit the ſpiritual court from trying a modus.

The principal reaſons why the courts of *common law* prohibit the *ſpiritual* court from trying of *moduſes* are, that whereas every *modus* is leſs than the real value, the rule of the *canon law* is, that leſs than real value ſhall not be taken, and that a *cuſtom* to the contrary is void: and that the *eccleſiaſtical* and *temporal* laws differ in the times of limitation; *forty years* or under making a good cuſtom by the *eccleſiaſtical* laws, whereas by the *temporal* laws it muſt be beyond the time of memory. *Vide Gibſ. Cod. p.* 691.

How the ſpiritual courts proceed.

The *ſpiritual* courts have commonly allowed, and do allow, pleas of *modus decimandi*; and the averment in the prohibition is not that they do take cognizance, but that the plea hath been offered and refuſed; which ſuppoſeth, that if the plea be admitted, the prohibition ought not to go. It hath been affirmed by *Doderidge and others*, that the *ſpiritual* court may as well try the *modus* as the right of tythes; and that a prohibition is not to be granted till the *ſpiritual* court either refuſe to admit the plea, or proceed to try it by methods different from the rules of the *temporal* law, as to the time of limitation, or number of witneſſes, or the like. *Lord Coke* contended for the contrary doctrine. It was declared by *Kelynge* and *Twiſden*, in the caſe of the *Biſhop of Lincoln againſt Smith*, that in caſe on a libel for a *modus decimandi*, if the *ſpiritual* court allow the plea, they may try it. *Vide Gibſ. Cod. p.* 691.

It ſeems ſettled now, that if a *modus decimandi* be ſued for in the *eccleſiaſtical* court, a prohibition lies to ſtop the trial of it, if the *modus* be denied; and the reaſon is, not upon the account that the *ſpiritual* court wants juriſdiction, but in regard of the notion the *temporal* law hath of *cuſtom* different from the *ſpiritual*. Every *modus* is due by *cuſtom*; it is the *common law* only that can determine what time and uſage with us ſhall be ſufficient to create ſuch a *cuſtom*; that is, time beyond all memory to the contrary.

trary Whereas, by the *ſpiritual* law, ſometimes *ten years*, ſometimes *twenty*, they will *adjudge* ſufficient to create a cuſtom. Prohibitions in ſuch caſes are granted; not becauſe the *ſpiritual* court hath not juriſdiction of the matter, but in reſpect of the trial, which is to be by the *temporal* law only: and if upon the trial it be found for the *modus*, the proceedings ſhall go on in the *ſpiritual* court; if againſt the *modus*, the prohibition ſhall ſtand. *Vide Watſ. c.* 56.

CHAP.

CHAP. IV.

Of things tytheable, and things not tytheable.

Acorns.

ACORNS (which are conſidered under the name of *maſts*) are the chief of thoſe things which the *ancient* laws call *pannage*. *Vide Gibſ. Cod. p.* 676.

Maſt of oak or beach.

Maſt of oak, or *beach*, if ſold, the *tenth penny* is payable for the tythe thereof; but if eaten by *ſwine*, then the *tenth value* or worth thereof. *Vide Godol. p.* 417. *Lindow. p.* 200.

Acorns ſeem not different from that of other things tytheable; when gathered, they ſhall pay tythes in kind; and the *tenth penny*, or *two ſhillings* in the pound, in all ſuch like caſes, is not to be conſidered as excluſive of the tythes to be paid in kind, but only as reaſonable ſatisfaction, when the pariſhioner diſpoſe of his whole produce unſevered. Where the acorns are not gathered by the owner, but ſuffered to be fed upon as they drop, this caſe ſeems to fall under the ſame equity as where *turnips* are fed on by unprofitable cattle, for which an agiſtment tythe ſhall be paid. *Vide* 2 *B. E. L. p.* 428.

The rule laid down by *Rolle* is that of *after-mowth*; that is, the *ſecond mowth*, tythes ſhall be paid *de jure*, without a *ſpecial preſcription*, to be diſcharged by payment of the tythes out of the *firſt mowth*, and then it ſhall be diſcharged. *Vide* 1 *Roll. Abr. p.* 640.

Sir Simon Degge held, that tythes are not to be paid of the *after-mowths of meadows*, unleſs if the meadowing be ſo rich that there are *two crops* of *hay* got in *one year*, then the parſon ſhall have tythe as well of the *latter* as of the *former crops*. *Vide Degge, p.* 2. *c.* 3.

If

If the occupier of the land can *preſcribe*, that in conſideration the owner doth make the *firſt tonſure* into good and ſufficient *hay*, and ſet it forth in cocks ſufficiently dried, then he ſhall be ſufficiently diſcharged of the tythes of the *after-mowth*; this is a *good preſcription* and diſcharge, by reaſon of the labour and coſt he beſtowed in making the *firſt tonſure* into *hay*. *Vide* 1 *Roll. Abr.* 648. 1 *Cro.* 660. 2 *Cro.* 42---116. *Moor.* 910.

If the *preſcription* be, to be diſcharged of the tythe of the *after-mowth* only upon conſideration that they have uſed, time out of mind, to cut down the graſs of the *firſt-mowth*, and the ſame to tedd and ſhake abroad; and the ſame graſs ſo diſperſed and caſt abroad together into ricks and winnows, and put into ſmall cocks at their own coſts; this is ſufficient though it be not made into *perfect hay*. *Vide Cro. Jac. p.* 42.

Agiſtment, what it is.

The keeping and feeding any ſorts of cattle, ſuch as ſheep, oxen, horſes, &c. is called in the law of tythes *agiſtment*.

The keeping and feeding ſuch cattle ſubjects the proprietor to the payment of a tenth part of what they eat.

By the *common law*, the food of cattle, namely the tenth part of it is the property of the incumbent as well as any other tythe whatſoever. But there is an abſolute neceſſity that a compenſation ſhould be granted in lieu of it, becauſe it cannot be aſcertained how much an animal will eat of the graſs or hay.

And the diſtinction in what ſorts of beaſts as are ſubject to this tythe, is of the utmoſt importance.

From the laſt time the ſheep are ſhorn, they are to pay this tythe, but when removed out of the pariſh, or ſlaughtered, the tythe ceaſes.

From the time that colts and fillies can live without the mare, they are ſubject to this tythe, but if they are employed in the buſineſs of huſbandry it

ceaſes, and with fillies when they have foals. It is the ſame when they are ſold or removed out of the pariſh, for it is locality that conſtitutes the tythe.

If *ſteers* are worked in the plough or in the team, then they are exempted from this tythe, but excepting theſe caſes, it muſt be paid from the time they are weaned. And it is the ſame with reſpect to horſes and other beaſts not yielding milk, nor employed either at the plough or in the team.

As long as any cattle, ſuch as horſes, bullocks, ſheep, and all that are called barren remain at graſs in any pariſh, the tenth part of the expence of their keeping is to be paid to the incumbent, and this is to be regulated in proportion to the price given for paſturage.

There are ſome rules to be attended to.

1*ſt*. The perſon who receives the tythes is entitled and has a right to demand one tenth of the produce of the land, but he may take what he pleaſes in lieu of it; but this extends only to where it can be taken in kind.

2*dly*, When new improvements are made, the tythe increaſes in proportion.

This laſt rule has been invariably reduced to practice, ever ſince tythes were firſt granted in England.

The clergy as well as the laity are liable to fall into miſtakes concerning the extent of tythes, for many imagine that a tenth part muſt be paid at all times for the paſturage of cattle, whereas it only extends to what is the common price, and the firſt rule above is laid down to obviate the difficulty.

In the ſale of cattle, the farmer is to give no account to the proprietor of the tythes what he ſold them for, becauſe that depends on the common market ſale, and ten pounds, ten ſhillings or even a voluntary

luntary preſent, does not come under the cognizance of the incumbent. The incumbent is not to make any enquiry into theſe things, but to reſt ſatisfied with the tenth part of what is received for the weekly paſturage. And here it is neceſſary to obſerve, that it is no matter whether the cattle live on good or bad paſturage, for in this the proprietor of the tythes is not in the leaſt concerned. And here it is neceſſary to obſerve, that although the proprietors of the cattle ſhould receive no benefit from them, yet the incumbent ſhall have a right to demand the tenth, according to the law of *agiſtment*. The improvement of lands depends upon the ſkill of the occupier, in which the proprietor of the tythes has no concern, and therefore he ought to reſt ſatisfied with what he is allowed by law.

And here it is neceſſary to obſerve, that the intricacy of the laws relating to tythes has created ſo much confuſion, that particular as well as general rules muſt be attended to. And therefore the three following caſes are put to elucidate the whole.

Firſt, In ſtocking of lands there is a neceſſity of mixing profitable and unprofitable cattle together, for there are but few farmers that have lands that will ſuit all. There is no occaſion for ſtarting difficulties concerning their being kept together, becauſe it will naturally appear what are their numbers, and the profitable will be eaſily diſtinguiſhed from the unprofitable. The tythe is to be accounted for according to the number of the profitable cattle, and to be eſtimated in proportion to the weekly payment generally and commonly allowed for their paſturage. Tythes are not to be paid for milch cows, ewes, nor working horſes, but a compenſation is to be granted in lieu of it.

The modus is, that the profitable ſhall always be paid for in kind, but the unprofitable according to the common rule of *agiſtment*, and this is the more neceſſary, becauſe there ſhould always be a diſtinction. And this muſt always be the rule where profitable and unprofitable ſtock are kept together.

Secondly, The following rule ariſes from a queſtion that has been often ſtated, namely, whether tythes of the kind are to be paid twice the ſame year? An anſwer to this is of great importance, and therefore it ſhall be delivered with accuracy.

In July a farmer cuts down his hay, and having ſettled with the incumbent for his tythes, he turns out his cattle to eat the after-graſs, and here the agiſtment is demanded for the time they have been there kept at paſturage. And this is to be regulated according to the common price paid for the feed of cattle in the pariſh, or in the neighbourhood where the pariſh is ſituated.

In caſes of this nature, the tythe muſt be paid for the *eddiſh or after-graſs*, as ſoon as it is eaten up by the cattle, whether they are profitable or unprofitable, and the agiſtment holds good till the time they are taken off from the paſture. The regulation is to be according to the weekly payment as eſtabliſhed in the place; and thus we find there is a law exiſting for incumbents receiving double tythes in the year, but this is only in particular caſes.

Thirdly, With reſpect to the tythe on wool, it is attended with a variety of difficulties; for a grazier may ſhear all his ſheep in the month of July, and after he has paid the tythe of their wool, he may naturally turn them out for paſturage upon thoſe lands which he has lately mowed. This being the *after-graſs*, it is ſoon conſumed, and then in order to preſerve his ſtock he may place them where they may enjoy the fertile benefit of turnips. Here the difficulty ariſes, what are the proprietors to pay to the incumbents.

Firſt, The wool in kind is paid.

Secondly, The proprietor muſt pay for the paſturage, which is called *agiſtment*.

From the time they were ſhorn till they were ſlaughtered, the incumbent has a right to demand tythes

tythes for ſeven months, according to the expences of keeping each *per* week, but this is to be regulated according to the manner in which they are fed.

According to this rule, there is a moſt exceſſive demand for tythes upon ſheep.

Firſt, The wool muſt be paid for in kind, and eſtimated according to the weight of the fleeces.

Secondly, The *agiſtment* or paſturage of the cattle muſt be paid for, and this depends upon circumſtances.

The general food for ſheep during the winter in many counties in England is turnips, and they generally turn to great advantage; but even this part of the animal's food becomes ſubject to taxation in the way of *agiſtment*.

And here it is neceſſary to obſerve, that when the proprietor has ſold his ſheep or ſlaughtered them, or removed them out of the pariſh, a very different circumſtance takes place. The caſe is this,

If a ſtranger ſhall ſend in his ſheep to eat up the turnips, or if they are let for hire by the week, they ſhall pay one tenth to the incumbent, and the owner of the fields ſhall be obliged to make it good. And this is an invariable rule not to be diſpenſed with, without the interference of an act of Parliament.

But there are ſome exceptions to theſe general rules.

If it ſhould happen that the turnips are eaten by the proprietor's own ſheep, the tythe muſt be eſtimated, either according to the value of the acre where they grew, or according to the paſture of the ſheep while they remained within the incloſure. And thoſe exceptions ought to be always attended to.

In ſome counties in England, the farmers feed their *ewes* and *lambs* on turnips, and in this manner they are kept till the graſs ſeaſon returns, when the ſheep are to be ſhorn again.

This is however a particular caſe, and it is attended with particular circumſtances. If the turnips are eaten by the farmer's own ſheep, or by thoſe of any of his neighbours, no agiſtment tythe is due for the keeping of ſuch ſheep, nor can any demand be made for the turnips. And the reaſon is plain, for they were kept in the pariſh till the incumbent received the tythe of the wool, or the cuſtomary fee in lieu of it. And here it may not be improper to obſerve, that a *modus* or compenſation for tythes is often ſet aſide in the court of Exchequer; for the fundamental law of the realm cannot be annulled by partial and temporary adjudications.

Again, it is neceſſary to be obſerved, that ſome ſheep may be removed ſuddenly out of the pariſh, and others may be ſlaughtered before there is a proper opportunity for the incumbent to make the demand for his tythes. And this may take place whether the cattle are profitable or unprofitable, or on whatever paſtures they are kept. In *agiſtment* the tythe can only be aſcertained according to the expence of keeping the beaſts, and it muſt be ſuch as was ſold or removed out of the pariſh before the time of ſhearing. The ſame will apply to the barren and unprofitable, who are to pay tax in an equal proportion. And this is to be reckoned from the laſt accounting day, to prevent all manner of diſputes, and to make a proper diſtinction between the profitable and the unprofitable.

If a foreigner, that lives in another pariſh, depaſtures ground for cattle bred to the plough and pail, to be employed in a foreign pariſh, he ſhall pay tythe for the agiſtment of ſuch cattle. *Vide Degge, p.* 2. *c.* 5. *Lord Raym. p.* 129.

If the ſame cattle are turned off to be fatted, and are grazed, their tythes of agiſtment ſhall be paid, ſince

ſince they are no way beneficial to the parſon in any other tythes. The ſame doctrine holds of *cows* after they are become barren, and are fatted for ſale. *Vide Gibſ. Cod. p.* 676. *Show. Ca. p.* 193.

Horſes, while they are kept for the uſe of huſ- Horſes.
bandry, no tythe ſhall be paid; if for ſale, or to carry coals, or for any other uſe that yields a profit to the owner, and not profitable to the parſon, tythe ſhall be paid for them. *Vide Gibſ. Cod. p.* 676. *Poph. p.* 126. 2 *Cro. p.* 430. *Hetl.* 93. 1 *Roll. Abr. p.* 646.

Saddle-horſes of travellers, or others taken in as Saddle-horſes.
gueſts horſes, it has been determined that tythe of agiſtment is due, becauſe no profit otherwiſe accrues to the parſon from ſuch cattle. *Vide Bunb.* 3. 1 *Roll. Abr. p.* 641.

The tythes for depaſturing unprofitable cattle ought Agiſtment-tythe by whom to be paid.
to be paid by the occupier of the gound, and not by the owner of the cattle. *Vide Bun.* 3.

If the occupier of the ground were not in ſuch caſe made liable, it would be greatly inconvenient for the parſon to ſue every owner of the beaſts, and perhaps it would be hard to be known, and the trouble and expence would be infinite. *Vide Roll. Abr. p.* 656. *Degge, p.* 2. *c.* 5.

If it is a common that is depaſtured, the owner of the cattle (if known) muſt pay the tythes, and not the owner of the ſoil, for the owner of the ſoil hath no profit by it. *Vide Bunb. p.* 3.

If *tythe of agiſtment* is refuſed, a ſuit may be com- Remedy for refuſal.
menced in the *ſpiritual* court againſt the occupier of the land, if for *gueſt cattle*, it may be brought either againſt the occupier of the land or owner of the cattle. *Vide Gibſ. Cod. p.* 677. *Jones W. p.* 254. *Hard. p.* 184.

It was determined 5 *Jac.* 1. that tythe of *alders* ſhall Alders.
be paid, although they be of *twenty years* growth, and more. *Vide Gibſ. Cod. p.* 677. 2 *Cro. p.* 199.

Altarage. It *was determined* (according to the *definition* of *altaragium*, given by the Biſhop of London, upon conference with the judge of the admiralty, the dean of the arches, and four other doctors of the *civil law*) that by alterage were underſtood *tythes of wool, lambs, colts, calves, pigs, goſlings, chickens, butter, cheeſe, hemp, flax, honey, fruits, herbs*, and ſuch other *ſmall tythes*, with offerings, that ſhall be due within the pariſh where produced. *Vide Gibſ. Cod. p.* 677.

Apples. On *libel* in the *ſpiritual* court for tythe of *two pecks of apples*, the owner of the orchard prayed a *prohibition*, on ſurmiſe that he had but *two pecks* in all, and that thoſe were ſtolen; *reſolved*, that if the owner ſuffered another to pull his apples, the parſon ſhall have tythes; *otherwiſe*, if they be taken by perſons not known, (for they are not tytheable before plucking) unleſs they are taken after the proper time of gathering, through the neglect of the owner in letting them hang too long. *Ibid. and Holt. p.* 100.

Aſh. This is determined to be timber, and ſo tythe free, being of or above *twenty years* growth. *Vide Gibſ. Cod. p.* 677.

Aſp-trees, Theſe, with *beech*, &c. have been deemed timber, and tythe free, in *Buckinghamſhire*, where, in the beginning of the laſt century, timber was ſcarce, and further at that time this wood was uſed for making arrows for the defence of the realm. *Sed quere* now. *Ibid.* 2 *Roll. p.* 83.

Bark Where the tree is a *timber-tree*, it ſhall pay no tythe, being priviledged by the body of the tree. *Vide Gibſ. Cod. p.* 677.

Peaſe. Where a perſon gathers *green peaſe* to ſpend in his houſe, and there ſpends them in his family, no tythes ſhall be paid for the ſame; otherwiſe if he gathers them to ſell, or to feed hogs, in that caſe they become tytheable. *Vide* 1 *Roll. Abr. p.* 647. *Degge, p.* 2. *c.* 3.

Note. Beans *and* Peas, *ſet and planted in rows, are deemed* ſmall tythe; *they are payable to the* impropriator, if

if the Vicar cannot ſhew an endowment or uſage to the contrary. Vide Bunb. p. 169. 2 *B. E. L. p.* 400.

By the *common law* this is not timber, and ought therefore to pay tythe, of what growth ſoever it be; where it hath been pleaded, that, by reaſon of the ſcarcity of timber in this or that county, (as Buckinghamſhire, &c.) they are forced to uſe it for timber; the court hath adjudged it to be priviledged by *ſtat. ſylva cædua. Vide Gibſ. Cod. p.* 677. 1 *Roll. Abr. p.* 640. 1 *Mod. p.* 54. 1 *Roll.* 355. 2 *Roll.* 83. Beech.

Theſe are reckoned among the things that are *feræ naturæ*, in their wild ſtate, and tythe free, yet, being gathered into hives, they become the property of ſome particular perſon, and then loſe that privilege, and are tytheable. Bees.

It has been determined, that the tythe due for them ſhall not be paid in *kind* by the *tenth ſwarm*, but that the *tenth meaſure of honey*, and the *tenth pound of wax*, ſhall be ſufficient. *Vide Gibſ. Cod. p.* 677. 1 *Roll. Abr. p.* 651. 3 *Cro. p.* 404.

Determined, that tythes of birch ſhall be paid, although of *twenty years growth*. *Vide Mo. p.* 907. 2 *Cro. p.* 199. Birch.

This is tytheable, although dug up in order to clear the land for tillage, but otherwiſe if uſed for huſbandry. *Vide Gibſ. Cod. p.* 67. Broom.

Of *common right*, the *tenth* calf is due to the parſon, to be taken when it is weaned, and not before; the *ſpiritual* court have determined, that if there are but *ſeven*, the parſon ſhall have *one calf*; if under *ſeven*, then a *half-penny*, or what cuſtom ſhall direct for each calf. The *canon* law has left it to the choice of the parſon, when they are under *ſeven*, whether he will proceed in that manner, or let them run on till *one becomes* due in the enſuing year; the *common law* will not allow of this, becauſe the tythe muſt be paid annually; and ſo, when the parſon ſued for a *ſeventh* calf, becoming due in that manner, a *prohibition* Calves.

hibition was granted. *Vide Gibſ. Cod. p.* 678. 1 *Roll. Abr. p.* 648. *Letch* 254.

Where there are above ten calves, lambs, pigs, or the like, the tythe of the odd number abve *ten* ſhall be paid for according to the value, and not carried over to the next year. *Vide Bunb. p.* 198.

A *cuſtom* of paying the *tenth* part of the price for every *calf* that is ſold, is a good cuſtom. *Vide Gibſ. Cod. p.* 678. 1 *Roll. Abr. p.* 648.

Note. The diſtinction of cattle, *as tytheable or not tytheable, ſee head* Agiſtment of Cattle.

Cattle on waſte grounds. The tythe of cattle feeding upon waſtes or commons, where the bounds of pariſhes are *uncertain*, ſhall be paid to the incumbent where the owner inhabits, according to *ſtat.* 2 *Edw.* 6. *cap.* 13. unleſs exempt by *cuſtom* or *preſcription*, and limited to ſome certain incumbent. *Vide Gibſ. Cod. p.* 678. *Sav. p.* 60.

Chalk. This is held not to be ſubject to tythe, being of the ſubſtance of the earth, and part of the freehold. *Vide* 2 *Inſt. p.* 651. 1 *Mod. Rep.* 35. 2 *Keb. p.* 696.

Cheeſe. Tythe of *cheeſe* can only be due where tythe is not paid of the *milk*; and payment of the *tenth cheeſe* in one part of the year; for example, from *May-day* till the *firſt of Auguſt*, may be a good *preſcription* for the diſcharge of tytheable milk for the whole year. *Vide Gibſ. Cod. p.* 678. 1 *Cro. p.* 608. *Mod. p.* 909.

Black cherries. Theſe have been held to be ſubject to tythe. *Vide Bunb. p.* 184.

Cherry trees. Theſe in the 17th year of *Jac.* 1. were held to be *timber-trees* in *Buckinghamſhire*, and not ſubjected to tythes, *ſed quere* now. *Vide Gibſ. Cod. p.* 678. 2 *Roll. p.* 83.

Chickens. On a *prohibition* to ſtay ſuit in the *ſpiritual* court for tythe *chicken*, *determined* that they were not tythe-

able,

able, becauſe the eggs were tythed. *Vide Gibſ. Cod. p.* 678. 2 *Roll.* 83.

This is not ſubject to tythe, being of the ſubſtance of the earth. *Vide* 2 *Inſt. p.* 63. *Marſh* 55. Clay.

Held, that if a man ſow his land with *clover*, and make his profit of the ſeed, this being a grain, the parſon ſhall have a tythe of it; if it is converted into *hay only*, and make his profit of the *hay*, the vicar being endowed of tythes of *hay*, ſhall have it as a *ſmall tythe*, *Gibſ. Cod. p.* 405. *Skin. p.* 341. Clover.

Clover and *vetches*, cut *green*, and given to cattle uſed in huſbandry, appears not ſubject to tythes. *Vide Bunb. p.* 279. Clover uſed for cattle in huſbandry.

Clover graſs ſhall go to him that hath the tythe of hay. *Vide Watſ. cap.* 39. Clover graſs.

Where the vicar is endowed of *tythe hay*, *decreed*, that he was thereby intitled to *clover*, *ſaintfoin*, and *rye-graſs*, which are ſpecies of *hay*, it being the *genus*. *Vide Bunb. p.* 79.

Note. *Clover ſeed, in its nature, is a ſmall tythe*, and ſo determined. *Vide Bunb. p.* 344. Clover ſeed.

A *modus* may extend to *clover*, although of late only brought into *England*, if the *modus* be ſuch as covers all tythes of hay. *Ibid. p.* 20.

This is exempt from payment of tythes, being of the ſubſtance of the earth, and not *annual*; tythe being due only by *cuſtom*. *Vide Gibſ. Cod. p.* 678. 2 *Inſt. p.* 651. 3 *Bulſt. p.* 114. 2 *Keb. p.* 177. Coal.

The time of payment of the tythe of *calves*, *colts*, *kids*, *pigs*, and ſuch like young cattle, is when they are ſo old that they may be weaned, and live without the dam upon the ſame food that the dam eateth, unleſs the cuſtom of the place confine the payment to any certain time or age. *Vide Degge, p.* 2. *c.* 6. Calves, colts, &c.

Theſe being *feræ naturæ*, are not tytheable of *com-* Conies.

mon

mon right; if they are ſued for, it muſt be on the ground of *cuſtom*. *Vide Gibſ. Cod. p.* 678. 2 *Roll. p.* 458. 1 *Keb.* 602. 2 *Keb. p.* 141---452.

Note. *The diſtinction is, that conies ſpent in the houſe ſhall not pay tythe, but ſuch as are ſold ſhall; the ſame doctrine has been frequently held as to pigeons. Vide Gibſ. Cod. p.* 679.

Corn. This is deemed a *predial* great tythe, and is tytheable according to the cuſtom of the place; it is uſually tythed by the *tenth ſhock*, *cock*, or *ſheaf*, where the cuſtom of the place is not otherwiſe. *Vide God. Report, Can. p.* 393.

How tythes are to be ſet out. Note. *The owner of the corn ought to cut down and prepare the ſame, and to make it up into* ſheaves, cocks, *or* ſhocks; *if the owner refuſe to do it, the parſon may ſue him for the ſame in the* ſpiritual *court; though the ſuit muſt be laid* ſpecially, *viz.* for not ſetting them forth in cocks, *and not* generally, *for not ſetting them forth. If the corn is made into ſheaves, he is not bound to ſet it up in heaps, unleſs the cuſtom of the place oblige him thereunto; but having bound it into ſheaves, or made it into cocks, he may ſet forth the tythe thereof, and thereby they become lay chattels, and then he may heap his own ſheaves, or do with them as he pleaſes, and the tythes being ſet forth, the owner is not bound to watch or look after them till the parſon carries them away. Vide Watſ. c.* 49.

Where cuſtom governs. If the cuſtom of the place be, to meaſure forth to the parſon the *tenth part* of the corn whilſt growing upon the land, it ſeems that this manner of tything ought to be obſerved; or if the cuſtom be, that the parſon ought to have for his tythe of *corn* the *tenth land* of corn, beginning at ſuch land as is next to the church, this cuſtom is good. *Vide Watſ. c.* 49. 2 *P. Will. p.* 659

If the cuſtom be, that if the odd *ſheaves* or *ſhocks*, under the number of *ten*, ſhall not be tythed, by reaſon that they ſet up the tythes in *heaps* or *ſhocks*, which of *common right* the owner of the corn is not bound

bound to do; the owner is not bound to divide the ſaid *ſheaves* or *ſhocks*, and ſet forth the *tenth* thereof; for that ſuch cuſtom upon ſuch conſideration is good. *Vide Watſ. c.* 49.

Dotards, or old decayed trees. Dotards, or old decayed trees, having been once privileged, as *ſylva cædua*, ſhall not pay tythes, though afterwards they become rotten, and are cut down for the fire; and yet it is certain the foundation of the privilege, (viz. their uſefulneſs in the way of timber) is gone; and ſo the privilege, if it ſubſiſt at all, muſt ſubſiſt without foundation; and though *More* reports the caſe as clearly determined, *Coke* ſays the court was divided. *Vide Gibſ. Cod. p.* 679. *Mod. p.* 908. 2 *Cro. p.* 101.

Doves. Theſe being kept in a *dove-houſe*, may pay tythe, by *cuſtom*. *Vide Gibſ. Cod. p.* 679. 1 *Vent.* 5.

Where paying a certain number of eggs is a good modus. Determined, that the paying *thirty eggs* in *Lent* is a good *modus* for all tythes of eggs. The *general rule* is, that where tythe is not paid of *chickens*, there it is due of *eggs*; and the *modus* juſt now mentioned, ſeems to croſs the rule of the law, that every *modus* ought to be ſomewhat (as to kind) different from the thing that is due. If a certain number of *ſheaves*, for all *corn*; or a *load* of *hay*, for all *hay*, it is ill; it ſeems by no means clear how *thirty eggs* for all eggs can be good, allowing them to be things that are *de jure* tytheable, which is not denied. But the diſtinction here taken is, that the *thirty eggs* are to be paid whether he had hens or no, and alſo are to be paid at a certain time; and ſo that payment, in the manner of it, differs from the payment of the tythe, *Vide* 1 *Roll. Abr. p.* 648. 2 *Salk. p.* 656.

Where there is a *cuſtom* to pay *thirty eggs* in *Lent*, the cuſtom binds the pariſhioner to the payment of ſo many at that time; and whether a pariſhioner has *hens* or not, he is obliged to it; ſo that he may be obliged to buy *eggs* to pay the parſon; and that makes it a *good cuſtom*. If the *cuſtom* was

was that he ſhould pay *thirty eggs* of his own *hens*; the cuſtom would be ill. *Vide Lord Raym. p.* 360.

Elm. This is deemed to be timber, and within the privilege of *ſylva cædua*, or wood of *twenty years growth*, ſo as to pay no tythe, if it be of or above *twenty years growth*. *Vide Gibſ. Cod. p.* 679.

Fallow. Determined, that if the parſon hath had tythe-*corn* one year, and the land lies *fallow*, without ſowing, the *next* year, in order to be ready for ploughing or ſowing the *third* year, that the parſon ſhall not have tythe for the *ſecond* year; becauſe its lying fallow meliorates the land, and gives the parſon a larger tythe the *third* year. *Vide Gibſ. Cod. p.* 679. 1 *Roll. Abr. p.* 642.

Fens. Being drained, ſhall not be privileged for the *firſt ſeven years*, under the name of *barren land*. *Ibid.*

Fiſh in the ſea. Held, that no tythe can be demanded of *fiſh caught in the ſea*, becauſe they are in no certain pariſh; which doctrine cannot hold of taking tythe in kind; becauſe that is as expreſsly denied of *fiſh* in *rivers*, that they are tytheable *de jure*, though within the precincts of certain pariſhes, and taken by *one* who hath a particular *fiſhery*. It ſeems that if fiſh are *feræ naturæ*, and not tytheable *de jure*, but on the foot of *cuſtom only*; and ſo with regard to the *perſonal tythe* that is due, it ſeems to make no difference, that *fiſh at ſea* are in no pariſh, as long as the fiſherman dwells, and lands in a pariſh. *Vide Gibſ. Cod. p.* 679. 3 *Cro. p.* 339.

Fiſh in a river. Fiſh in a *river* are declared not to be tytheable *de jure*; the river is deſcribed under the particular circumſtance of a *common river*, and not *incloſed*, which ſhews that it was then thought that *fiſh in ponds*, and in *rivers incloſed*, and not *common*, were not to be reckoned *feræ naturæ*, but to be *de jure* tytheable; and that then being the property of *particular perſons*, who had the *benefit* of them, was a *good reaſon* why they ſhould be tythed.

Fiſh tytheable by cuſtom. On a queſtion as to the tythe of *fiſh* due by *cuſtom*; which

which cuſtom was laid for all fiſh taken at ſea, and brought to land, and ſold within a certain pariſh, and alſo in another port; determined, that in caſe a double tythe may be payable, not only in *another port* where the *fiſh* is *ſold*, but alſo where the *fiſherman* inhabits; to which *three barons*, againſt the *lord chief baron*, ſaid it was a *good cuſtom*; for one tythe may be paid by *cuſtom*, and *one* of *common right*. *Vide Bunb. p.* 43.

Adjudged a *ſmall tythe*, notwithſtanding its being *ſown* in large fields. *Vide Gibſ. Cod. p.* 680. 1 *Roll. Abr.* 637. 2 *Lev.* 365. *Skin.* 341---355. *Carth. p.* 263. Flax.

By this name are commonly underſtood *hens*, *geeſe*, *ducks*, and *turkies*; the laſt of theſe four have been declared *feræ naturæ*, and not *tytheable*; the other *three* are ſubject to pay *tythes*, (either in *eggs* or in the *young*, according to *cuſtom*) but not in both. *Vide Gibſ. Cod. p.* 680. *Mod. p.* 599. 1 *Roll. Abr. p.* 642. Fowls.

As *apples*, *pears*, *plumbs*, *cherries*, and the like, when gathered, tythe in *kind* is due. Lord Coke ſays, *fruit-trees*, if they have paid *tythe-fruit*, and be cut down, and ſold in *billet* or *faggot*, they ſhall not pay *tythe*; for the *fruit* and *tree* be not of *ſeveral kinds*; but *quere*, as they yield profit to the owner, which is the eſtabliſhed rule for creating a tythe to the parſon. *Ibid. and* 2 *Inſt. p.* 652. Fruit.

Adjudged, that *fuel* of *any kind* that is ſpent in the pariſhioners own houſes are not ſubject to tythe. *Ibid.* 1 *Cro. p.* 609. *Mod. p.* 909. Fuel.

If a perſon keeps a houſe of *huſbandry*, and makes it appear that he uſed the *furzes for fuel*, or to make *pens* for his *ſheep*, no tythe ſhall be paid; but otherwiſe if ſold. *Ibid.* 1 *Mod. p.* 609. 3 *Keb. p.* 635. *Litt. p.* 267. *Hill.* 1723. *Bunb.* 144---145. Furzes.

Theſe pay tythe of *herbs* and *plants*, as *parſley*, *ſage*, *cabbage*, *turnips*, *ſaffron*, and the like, which are deemed *ſmall tythes*, and may be demanded *in kind*; uſually Gardens.

uſually a certain conſideration is paid for *theſe things*, either by *cuſtom* or by *agreement* with the parſon. If the *cuſtom* be a *parochial cuſtom*, or extending to gardens throughout the pariſh, the enlargement of a garden doth not make *tythe* due in *ſpecie*; but otherwiſe if it was a *ſpecial preſcription* for *this* or *that garden*. And the ſame doctrine holds as to *orchards*. *Vide Gibſ. Cod. p.* 680.

Note. *All garden ground in England ſhall pay tythes for the different crops; and turnips, when they are pulled out pay tythes, though never ſo often ſowed, and though upon the ſame land. Vide Bunb. p.* 10.

Glaſs-houſe. Determined, that the profit of a glaſs-houſe, which grows by the *labour* and *induſtry* of man, ſhall not pay tythe *in kind*. *Vide Gibſ. Cod. p.* 680, *Litt. p.* 314.

Gravel. This is not ſubject to tythe, as being of the ſubſtance of the earth. *Vide Gibſ. Cod.* 680.

Hazle. *Hazle*, *holly*, *willow*, *white-thorn*, &c. being ſued for in the *ſpiritual* court, a prohibition was moved, and obtained; on the ſuggeſtion, that they were of *twenty years growth*, and more; and by the *common cuſtom* of the place, were uſed for *timber* to *build* and *repair* their *ploughs*.

Hay mown to feed deer. *Hay*, mown to feed *deer*, tythes are due of *common right*, and ſhall be paid, unleſs there be a *cuſtom* to the contrary.

Head-lands. *Determined* a good diſcharge from the *tythe of hay*, upon the *head-land*, that the owner reaped, bound, and ſhocked the corn; on ſuppoſition that the tenth ridge is the thing due for the tythe, and that the labour of the owner about the corn (to which he was not bound) was a good foundation of ſuch diſcharge. *Vide Gibſ. Cod. p.* 681. 2 *Leon. p.* 70.

A *cuſtom* for *head-lands* ſown with corn to be diſcharged of tythes, becauſe fed with *plough-cattle*, or *mowed* and *cut* for that purpoſe; adjudged a *good cuſtom*. *Gibſ. Cod. p.* 681.

This

This tythe is now aſcertained at *five ſhillings per acre*, by *ſtat.* 11 *and* 12 *W.* 3. *c.* 16. which *enacts*, " Whereas the ſowing of hemp and flax is and would " be exceeding beneficial to *England*, by reaſon of " the multitude of people that are and would be em- " ployed in the manufacturing of thoſe two materials, " and therefore do juſtly deſerve great encouragement; " and whereas the manner of tything hemp and flax is " exceeding difficult, creating thereby chargeable and " vexatious ſuits and animoſities between parſons, vi- " cars, impropriators, and their pariſhioners; for re- " medying whereof it is enacted, that every perſon " who ſhall ſow any hemp or flax ſhall pay to the " parſon, vicar, or impropriator, yearly, the ſum of " five ſhillings, and no more, for each acre of hemp " and flax ſo ſown, before the ſame be carried off " the ground, and ſo proportionably for more or leſs " ground ſo ſown; for the recovery of which ſum or " ſums, the parſon, vicar, or impropriator, ſhall have " the common and uſual remedy allowed of by the laws " of this land." Hemp and flax.

SECT. 2. " Provided, that this ſhall not extend to " charge any lands diſcharged by any *modus decimandi*, " *ancient compoſition*, or otherwiſe diſcharged of tythes " by *law*."

This tythe ſhall be paid, though above *twenty years growth*, unleſs on a ſpecial ſuggeſtion of ſcarcity of timber to build and repair their ploughs. *Vide Gibſ. Cod. p.* 681. 2 *Cro. p.* 199. *Mod.* 30. Holly.

Reſolved, that tythe of *honey* and *wax* ought to be paid in *kind de jure*; and it is accounted a *predial tythe*. *Vide Gibſ. Cod. p.* 681. 3 *Cro. p.* 529. *Jones W. p.* 447. Honey.

On a queſtion for hops in *Kent*; *adjudged*, that they were *great tythes*; but as for hops in *orchards* or *gardens*, theſe were reſolved to belong to the vicar, as *minutæ decimæ*. *Vide Gibſ. Cod. p.* 681. *Hutt.* 78. Hops, what they are.

Note. *Hops pay a predial tythe, and regularly are accounted among ſmall tythes.*

On a caſe where the vicar was endowed of *ſmall tythes*, *agreed* that he was thereby intitled to *hops*, being a *ſmall tythe*, though of growth ſince the endowment. *Vide Bunb. p.* 79.

On a queſtion whether a *modus* may be pleaded to be diſcharged of tythe of hops, 22 *Car.* 2. the ſuggeſtion was, that they paid ſo much *an acre* for *tythe-hops* time out of mind; the court denied a prohibition, becauſe *hops* in *England*, (whether brought in during the reign of *Hen.* 8. or of *Queen Elizabeth*) were much later than the time of memory, and therefore no *preſcription* could be pleaded. *Vide Gibſ. Cod. p.* 682.

A *preſcription* to pay ſo much in lieu of all *ſmall tythes* may include *hops*, and other ſuch ſmall things which have come in uſe of late years. *Vide Watſ. c.* 49. *Bunb. p.* 20.

In the caſe of Walton v. Tyers, in the *Exchequer*, on appeal in the Houſe of Lords, on ſolemn argument, determined, that the *tythe of hops* by *law* ought to be ſet out by *meaſure*, after they are picked from the bind or ſtem; and the decree was affirmed by the Lords. *Vide* 2 *B. E. L. p.* 419.

On motion for a *prohibition* to be directed to the *conſiſtory* court of the *Biſhop of Worceſter*, to ſtay proceedings in a ſuit there for *tythes of hops*, upon ſuggeſtion of a *modus*, time whereof, &c. there uſed, that if the parſon ſend a ſervant, &c. to pull *aliquam partem lupularum*, he ſhall have the tythes of them, &c. upon which a rule was made to ſhew cauſe why a prohibition ſhould not be granted. And on cauſe being ſhewn, held, *Firſt*; The cuſtom is void for uncertainty; for it does not appear how much hops ought to be pulled, &c. *Secondly*; That it is an ill cuſtom, becauſe it is no benefit at all to the parſon, but drives him to more pains than the law requires, to entitle him to that which by *law* he ought to have in the ſame manner without ſuch pains. Of which opinion was the whole court, and therefore the rule was diſcharged. *Vide Lord Raym. p.* 504, 505.

A *ſaddle-*

A *ſaddle-horſe* that is kept for pleaſure *tythe of agiſtment* ſhall not be paid, becauſe by it no profit comes in; it ſhall be paid for *working-horſes* for the cart or plough, where they labour about ſuch things as are profitable to the owner, and of no profit to the parſon. *Vide* 1 *Bulſt. p.* 171. *Poph.* 126. 1 *Roll. Abr. p.* 646. *Gibſ. Cod. p.* 682. Horſes for pleaſure.

Horſes kept for *ſale*, and are *ſold*; or if they be the *horſes* of *travellers*, or others taken in as *gueſt-horſes*, it is agreed that *tythe of agiſtment* is due, becauſe a profit ariſes from them. *Vide Gibſ. Cod. p.* 682. 1 *Roll. Abr. p.* 647. 1 *Bulſtr.* 171. *Hard.* 95. *Poph.* 142. Horſes for ſale.

Saddle-horſes ſhall pay no tythes no more than *cattle* for the *plough* and *pail*, or *cattle killed* for the uſe of a man's own family, in reſpect of the profit that otherwiſe accrues to the parſon from theſe. *Vide Bunb. p.* 3. Saddle-horſes.

Of *common right* no tythe ought to be paid of *houſes of habitation*, becauſe they do not grow and renew by the year; but though no tythe is payable *de jure*, yet, if time out of mind a *modus decimandi* hath been paid for houſes, it may be recovered in the *eccleſiaſtical* court in the nature of tythe; and the law will ſuppoſe that it was originally in lieu of the tythes of the land upon which the houſes are built. *Vide Gibſ. Cod. p.* 682. 11 *Rep.* 16. *a. Hob.* 10. Houſes.

Lambs are deemed a mixed *ſmall tythe*, and ſo determined in many caſes in the *Exchequer*. *Vide Gibſ. Cod. p.* 682. *Poph.* 144. *Palm.* 219. Lambs.

Where the number is under *ten*, it is the ſame with the manner of tything calves in the like caſe, which ſee under that head; and if the parſon inſiſts upon it that he will wait till next year, that they may come up to the tytheable number; or if the lambs belonging to the ſeveral owners are put together, to be tythed jointly, in both caſes *prohibition* will lie: in the *firſt* caſe, becauſe it is againſt the nature of tythe by the *common law*, which is annual; and in the *ſecond*, becauſe it is a *cuſtom* againſt reaſon; for by that means it may fall out that ſome one may have but *one lamb*, Houſe lambs are tythed.

and that be taken for tythe; and he that had more ſhould pay nothing at all. *Vide Gibſ. Cod. p.* 682. 3 *Cro. p.* 403. *Hob. p.* 529.

In the caſe of *Selby v. Clerk*, held by *Holt*, *chief juſtice*, that the *tenth lamb* is due to the parſon by *common right*; and though they make diſtribution in the *eccleſiaſtical* courts, that is only among the parſons themſelves, with relation to places of their feeding throughout the year, but does not concern the proprietor of the land, who ought to pay the *tenth lamb* to the parſon by *common law*. But this, when paid, could be no foundation of a claim by way of *modus*, to be diſcharged of all tythes of the lambs there fed, on which the pretence for a *modus* was founded. *Vide Lord Raym. p.* 677.

Lead. Is one of the things which my *Lord Coke* exempts from tythe, as of the ſubſtance of the earth, and not annual; and therefore where tythe is claimed it muſt be upon the foot of *cuſtom*. *Vide* 2 *Inſt. p.* 651. *Gibſ. Cod. p.* 682.

Lime. Is one of the things exempted from tythe on the ſame ground as lead. *Vide* 1 *Roll. Abr. p.* 642. 2 *Keb. p.* 596.

Loppings of trees. It is agreed by all, that *timber-trees* of the age of *twenty years*, or *above*, ſhall not pay *tythe of loppings*; (no, not if they be cut every *ten* or *twelve years:*) but it hath been made a queſtion, whether ſuch branches, if the trees are lopped *before twenty years*, ſhall not always pay for *loppings after twenty years*, inaſmuch as at the *firſt lopping* the tree was not privileged. *Vide Gibſ. Cod. p.* 682—683. 2 *Cro.* 101. *Mod.* 762—908.

Madder. By *ſtat.* 31 *Geo.* 2. *cap.* 12. *ſect.* 1. "Every perſon "who ſhall plant, raiſe, or cultivate any madder in any "pariſh or place within England, ſhall pay to every "parſon, vicar, curate, or impropriator of ſuch pariſh, "&c. *five ſhillings* and no more, yearly, for each acre "of madder ſo planted, and proportionably for more or "leſs ground ſo planted in lieu of all tythe of madder;

"for

" for the recovery of which ſums the parſon, &c. ſhall " have the uſual remedy."

Sect. 2. " No madder ſhall be carried off the ground " on which it grows, before the money directed to be " taken in lieu of tythes be paid to the perſon intitled."

Sect. 3. " This act ſhall not extend to charge any " lands diſcharged by any *modus decimandi*, ancient " compoſition, or other diſcharge of tythes by law."

Sect. 4. " This act ſhall be in force for fourteen " years, and from thence to the end of the then next " ſeſſion of parliament."

By *ſtat.* 5 *Geo.* 3. *c.* 18. " Whereas an act made in " the thirty-firſt year of his late Majeſty King George " the Second, intitled, *An Act to encourage the growth* " *or cultivation of madder in that part of Great Britain* " *called England*, by aſcertaining the tythe thereof, was " to continue in force from the firſt day of Auguſt, " one thouſand ſeven hundred and fifty-eight, for the " ſpace of fourteen years, and from thence to the end of " the then next ſeſſion of parliament: And whereas the " cultivation of madder, from the ſetting to its being " fit for uſe, requires ſo long a time, and the buildings, " mills, and other requiſites neceſſary to be provided " and maintained for manufacturing it, are ſo expen- " ſive, that many people may be unwilling to begin " the culture of it during the ſubſiſting term of the " ſaid act: And whereas the price of foreign madder is " of late greatly raiſed, and the ſame does not come " into the conſumers hands ſo good as it may be " manufactured here; be it therefore enacted, &c. " that the ſaid act ſhall be, and the ſame is hereby " declared to be further continued from the expira- " tion thereof, for and during the further term of " fourteen years, and to the end of the then next ſeſ- " ſion of parliament."

Maple. Tythe of *maple* ſhall be paid, although it be of *twenty years growth* and more. *Vide Gibſ. Cod. p.* 683. 2 *Cro.* 199.

Maſt.

Sir Simon Degge obſerves, that *tythes of crabs, maſt*, &c. is to be paid when the ſame are gathered, or ſatisfaction is to be given if eaten with ſwine on the ground. *Vide Gibſ. Cod. p.* 683.

Manner of paying tythe of milk.

On *tythe-milk*, *three* things are inquirable: *Firſt*; To whom? And that is, to the parſon in whoſe pariſh the *cows yielding milk* are depaſtured for the time; *Second*; In what manner? and that ſhall be, not by the *tenth part of every meal*, but by every *tenth meal* entire; *Third*; At what place? and that was *adjudged* to be the *church-porch*, whither it ſhall be brought by the pariſhioner, *Declared per curiam*, that of *common right tythe-milk* is payable at the *parſonage* or *vicarage-houſe*. *Vide Gibſ. Cod. p.* 683. *Raym.* (*S. T.*) *p.* 277. *Lord Raym. p.* 129.

Milk of goats and ewes.

The ſame rules that take place as to the *milk of cows* do, by parity of reaſon, and according to the laws of the church, hold in the *milk of goats* and *ewes*, where it is preſerved. *Vide Gilſ. Cod. p.* 683.

In the caſe of Dodſon v. Oliver, *decreed*, that if there be any *cuſtom* in a pariſh for the manner of *tything-milk*, as to carry it to the *church-porch*, or *parſonage-houſe*, that muſt be obſerved by the pariſhioner; but if there be no particular cuſtom or uſage, the pariſhioner is obliged *de jure* to pay every *tenth meal*, to milk the cows at the uſual place of milking into his own pails; and the parſon is obliged to fetch it away from the milking-place in his own pails, in a reaſonable time; and if he doth not fetch it before the next milking-time, the pariſhioner may juſtify pouring the milk upon the ground, becauſe he hath occaſion for his own pails. *Determined* by the whole court of *Exchequer* in this caſe, that the milk ought not to be carried either to the *church-porch*, or to the *parſon's houſe*, and that it ought to be fetched by the parſon. *Vide Bunb. p.* 73.

Mills.

Mills are of *two* ſorts, either *corn-mills*, or *mills for other uſes*, as *paper-mills*, *fulling-mills*, and the like. *Corn-mills* have been commonly thought to yield a *predial*

dial tythe, viz the *tenth toll-diſh*, from its belonging to the incumbent where the mill ſtands, and not where the miller dwells; according to the known diſtinction, that *predial tythes* are payable where they ariſe; *perſonal* where the perſon hears divine ſervice, and receives the ſacrament; as was argued by my Lord Chief Juſtice Holt, 3 W. & M. in the caſe of *Gumley v. Falkingham*, contrary to the ſuggeſtion of *Coke* in his *commentary upon articuli cleri, cap.* 5. where he ſpeaks of ſome who would have the *tythe of corn-mills* to be *perſonal*, as well as the *tythe of other mills*; and it hath been ſo *adjudged* in the Houſe of Lords to be a *perſonal tythe*, contrary to the determination of *Lyndwood*. *Vide Gibſ. Cod.* 683. *Show.* 281. *Carth.* 215. 2 *Inſt. p.* 671.

It was determined by the Houſe of Lords, that *mills are tytheable*, but that the ſame is a *perſonal tythe*, and ſo ought to be paid out of the *clear gain*, after all manner of charges and expences are deducted. *Vide* 2 *P. Will. p.* 463.

The *canoniſts* hold, that this is a *predial tythe*, and that the *tenth toll-diſh* ought to be paid for the ſame, without deduction of expences: but this doth not agree with the *common law*, and therefore is not binding. *Vide Degge, p.* 2. *c.* 9. Wind-mills.

By *ſtatute* 9 *Edw.* 2. *ſtat.* 1. *c.* 5. "If any do erect "in his ground a mill of new, and afterwards the "parſon of the ſame place demandeth the tythe for the "ſame, the King's prohibition ſhall not lie."

It hath been reſolved, that *fulling-mills*, *tin-mills*, *lead-mills*, *plate-mills*, and the like, are not within this ſtatute, nor is tythe due of ſuch otherwiſe than by *cuſtom*. *Vide Gibſ. Cod. p.* 166. Fulling-mills, tin-mills, lead-mills, and plate-mills.

Note. "Mills, where their firſt erection is not "known, the rule of their diſcharge ſeems to be, "that all ſuch mills whoſe firſt erection was before "time of memory, and is not otherwiſe known by "matter of record, and have not been ſubject to the "payment of tythes, ſhall be intended to be erected

" before the ſtatute, and ſo to be tythe free. But as " to mills for which tythes hath been paid, and new " mills, tythes muſt be paid for them." *Vide Bunb. p.* 133.

Where there is a *modus* in lieu of all tythes iſſuing out of a meſſuage, and an *ancient* water-mill for corn, and a new water-mill for corn is erected within the ſaid meſſuage, if the ſtream on which the *ancient* mill ſtood is diverted by the owner, *(and not by the act of God)* and a new mill erected upon the new ſtream, they ſhall not be diſcharged by virtue of any *former modus*. *Vide* 1 *Roll. Abr. p.* 641.

Where there hath been an *ancient* corn-mill, for which a *modus* hath been paid for time *immemorial*, and afterwards, by continuance of time, the mill-ſtream changes its courſe, and goes in a place a little diſtant from the *ancient* ſtream, and thereupon the owner of the mill pulls it down, and rebuilds it in the new place where the ſtream now runs, this ſhall be diſcharged of tythes by force of the *ancient modus*; for this comes by the act of God, and not by the act of the party. *Vide* 1 *Roll. Abr. p.* 641.

Nurſeries. On theſe two queſtions ariſe; *Firſt*; Whether they ſhall pay tythe? And though it was urged that they are of the nature of the land, and ſo are privileged, yet the whole court was of opinion, that inaſmuch as the owner dug them up, and made profit of them, and ſold them in another pariſh, tythe ſhould be paid of them. *Secondly*; By whom the tythe ſhall be paid? Which queſtion was reſolved by the court in the caſe of *Grant v. Kedding*, *viz.* if the owner ſells them, and pulls them up himſelf, he ſhall pay the tythes; but if he ſell them particularly to another, the vendee ſhall pay the tythes. *Vide Gibſ. Cod. p.* 683, 684. 3 *Cro. p.* 526, *Jones W. p.* 416. *Hard. p.* 380.

Oak. This, together with *aſh* and *elm*, are privileged from paying tythe by the *ſtatute of ſylva cædua*, as timber, being of or above the growth of *twenty years*: it hath been reſolved, that *oak* under *twenty years*, being fit for timber in time to come, ſhall not pay tythe; and that though

though it ſtands till it is rotten, and unfit not only for timber, but for all manner of uſes except the fire, it ſhall be privileged, becauſe it hath been once privileged.

Decreed, that *Eaſter offerings* were due of *common right* at *two-pence per head*, unleſs it be cuſtomary to pay more. *Vide Bunb. p.* 173, 174. Eaſter offerings.

If the ſoil of an *orchard* be ſown with any kind of grain, the parſon ſhall have tythe of the *fruit-trees*, and of the grain, for they be of ſeveral and diſtinct kinds. Orchards.

Theſe being employed in hurdles for ſheep, no tythe ſhall be paid of them. *Vide* 2 *Keb. p.* 635. Oſiers.

All the *books* are clear, that if the *modus* was a certain conſideration in money for all the tythes of ſuch a park, ſuch *modus* ſhall hold, notwithſtanding it be diſparked. But if the *modus* was for the *deer* and *herbage* of ſuch a park, the *modus* is gone upon ſuch park being diſparked. *Vide Gibſ. Cod. p.* 684. *Mod. p.* 909. 3 *Cro. p.* 467. 2 *Bulſt. p.* 240. Parks.

The ſame *doctrine* holds, if the *modus* had been to pay a *buck* and a *doe* for all tythes of ſuch a park, and the park is diſparked, the *modus* ſhall continue, and the owner may give a *buck* and a *doe* out of another park; but if it was to pay the *ſhoulder of every deer*, or expreſsly a *buck* or a *doe* out of the ſame park, the *modus* is gone. *Vide Gibſ. Cod. p.* 684. *Noy*, 34. *Mod. p.* 909.

No tythe ſhall be paid of the *eggs* or *young of partridges* and *pheaſants*, becauſe they are *feræ naturæ*; and though they be made tame, or be kept in a place incloſed, (their wings being clipped) and there lay eggs, and hatch young ones, yet this is held not to alter the caſe. *Vide Gibſ. Cod. p.* 684. 1 *Roll. Abr. p.* 636. Partridge.

Held, that if one gather *green peaſe* to be eat in his houſe, no tythe ſhall be paid of them; but if gathered for ſale, or to feed hogs, they become ſubject to tythe. *Vide Gibſ. Cod. p.* 684. 1 *Roll. Abr. p.* 647. Peaſe.

Pay

Pheaſants. Pay no tythes. *Vide Gibſ. Cod. p.* 684. *Mar. p.* 26.

Pigeons. No tythe due for *pigeons* ſpent in the houſe, but are ſubject to tythe if ſold. *Vide Gibſ. Cod. p.* 684. 1 *Roll. Abr. p.* 644. 2 *Roll. Rep.* 2.

Note. "The ſame doctrine holds as to pigeons "which are in holes about a houſe, and increaſe "there." *Vide Gibſ. Cod. p.* 684.

Rakings. No tythe is due *de jure*, being left for the poor, (as was directed in the law of Moſes) and being alſo the remains of corn, for which tythe has been paid; but this is to be underſtood only of rakings, which have been *minus voluntarie diſperſæ*. *Vide Gibſ. Cod. p.* 684. *Litt. p.* 35. 1 *Cro. p.* 475. 1 *Roll. Abr. p.* 645.

Rape-ſeed. This is deemed a *ſmall tythe*, and it is uſual for the occupier of the land to agree with the owner of the tythe for the tythe of *rape-ſeed* at ſo much an acre. *Vide* 2 *Burn. E. L. p.* 406.

Roots. Held, that if a man cut *coppice wood*, and pay tythe of it, and before any new branches ſprung out, grub up the roots and ſtubbs of the wood, he ſhould not pay tythe of them, becauſe they are *parcel of the frank tenement*, and do not renew annually. *Vide Gibſ. Cod. p.* 684.

Saffron. Is a *predial ſmall tythe*; for where the parſon had the *great tythes*, and the vicar the *ſmall*, and a land which had been ſown with *corn* was ſown with *ſaffron*, the tythe was adjudged to the *vicar* as a *ſmall tythe*, notwithſtanding *ſtatute* 2 *Edw.* 6. *c.* 13. that tythes ſhall be paid in ſuch manner as they have been for *forty years* paſt. *Vide Gibſ. Cod. p.* 685. *Mod.* 909. *Ow.* 74.

Salt. Not tytheable but by *cuſtom* only. *Vide Gibſ. Cod. p.* 685.

Tares. *Held*, that *tares*, whether *green* or *ripe*, are a *great tythe*, and belonged to the *rector*; if given to cattle of huſbandry, not ſubject to tythe. *Vide Bunb. p.* 279.

A *pre-*

A *preſcription* may be within a pariſh that, by reaſon they have not ſufficient meadow for *milch-kine* and *draught-cattle*, they have uſed to cut ſome of their *tares green*, and give them to the aforeſaid ſtock, and to be diſcharged of tythes for the ſame: and this is a *good cuſtom*, on conſideration for that the parſon hath an advantage thereby as well as the pariſhioner, *namely*, in the *tythe-milk*, and manuring of the *other corn land*; and the matter is, the want of meadow and paſture; and the ſurmiſe is, that if it had been ſaid, that for want of meadow and paſture they have uſed to eat their meadows with their plough cattle, and for ſo much as they did eat to pay no tythes. *Vide Watſ. c.* 49. *Bunb. p.* 279. Preſcription.

The ſame if a man, according to the cuſtom of the country, doth ſow his land to feed his *horſes for tillage*. and the uſe hath been to ſuffer the horſes to be fed upon the land, without any mowing of the grain, the parſon ſhall not have any tythes thereof, becauſe it is no more than *paſture for his horſes*. *Vide Watſ. c.* 49.

Not tytheable, being of the ſubſtance of the earth, and not annual. *Vide* 2 *Inſt. p.* 651. Tile.

By a conſtitution of *Archbiſhop Winchelſea*, tythes ſhall be paid of trees if they be ſold; which *Lyndwood* explains of *large trees* which do bear fruit, and being cut down, are not fit for timber, but are uſed for fuel. *Vide Lynd. p.* 200. Trees.

By *ſtatute* 45 *Edw.* 3. *c.* 3. *it is enacted* as followeth: " As the complaint of the great men and the com-
" mons, ſhewing by their petition, that whereas they
" ſell their great wood of the age of *twenty years*, or
" of greater age, to merchants, to their own profit, or
" in aid of the King in his wars, parſons and vicars of
" *holy church* do implead and draw the ſaid merchants
" in the *ſpiritual* court for the tythes of the ſaid wood,
" in the name of this word called *ſylva cædua*, whereby
" they cannot ſell their woods to the very value, to the
" great damage of them and of the realm; it is ordained
" and eſtabliſhed, that a *prohibition* in this caſe ſhall be granted,

" granted, and upon the ſame an attachment, as it " hath been uſed before his time."

Note. " The wood intended in this ſtatute is ſuch " as is fit for building of houſes and ſhips, and there- " fore without doubt it comprehends oak, elm, and " aſh; but it hath alſo been adjudged to include beech, " as timber in Buckinghamſhire, and ſome other coun- " ties, where better timber is not to be had, or is very " ſcarce. And thoſe trees are free, not only as to " the trunk or timber, but alſo as to the bark, root, " and germins that grew upon the ancient ſtock; and " it is not material how often or how ſeldom the " branches thereof are lopped, becauſe being once free, " they are always free. *Vide* 2 *Inſt. p.* 643.

Oak. Oak under *twenty years*, being fit for timber in time to come, ſhall not pay tythe; and that though it ſtands till it is rotten, and unfit not only for timber, but for all manner of uſes except the fire, it ſhall be privileged upon this general *maxim*, that once diſcharged and always diſcharged. *Vide* 1 *Roll. Abr. p.* 640.

Timber-trees. *Timber-trees* above *twenty years growth*, cut and corded for fuel, and the bark ſtripped from the ſame, *adjudged* to pay tythes as well as *underwood*; but that no tythe was due for ſuch wood above *twenty years growth*, nor of the bark thereof, which was not corded. *Vide Bunb. p.* 98.

Turf. *Tythe-free*, as part of the freehold. *Vide Gibſ. Cod. p.* 685. 1 *Mod. Rep. p.* 35. 2 *Inſt. p.* 651.

Turkies. In the caſe of *Carlton v. Brightwell*, it was holden by the *Maſter of the Rolls*, that *turkies* are birds as tame as hens or other poultry, and therefore muſt pay tythes. And alſo that if tythes be *once* paid of *eggs*, there can be no demand made a *ſecond time* in reſpect of the *chicken* hatched afterwards. *Vide* 2 *P. Will. p.* 462.

Turnips. Held, that where land is ſown with *turnips* after the corn is cleared, and fed with ſheep and barren cattle, that tythe ſhall be paid of ſuch *turnips*; though it was

inſiſted

inſiſted upon, that the ſoil in that county (*Staffordſhire*) was *dry* and *ſandy*, and that this method of huſbandry improved the land, ſo that the parſon had *uberiores decimas* of *corn*, and had received the tythe of *lambs* and *wool* of the *ſheep* ſo fed before; but the court overruled this defence, and ſaid it amounted to a *non decimando* as to tythes. *Vide Bunb. p.* 314.

Wastes tytheable

By *ſtatute* 2 *Edw.* 6. *c.* 13. *ſect.* 3. the tythe of cattle feeding on large waſtes, where the pariſh is uncertain, ſhall pay tythe to the incumbent of that pariſh in which the owner of the cattle dwells, unleſs limited otherwiſe by *cuſtom* or *preſcription*.

Willows.

Are not tytheable if growing about a houſe, though it is waſte to fell them, yet being felled, tythe ſhall be paid of them. *Vide Gibſ. Cod. p.* 685. *Hob. p.* 210.

Woad.

Growing in the nature of an *herb*, the tythe thereof is a *ſmall tythe*. *Vide* 3 *Cro. p.* 28. *Hetl. p.* 77.

Wood,

According to the *common opinion*, *wood* paſſes for a *great tythe*; that in controverſies between *parſon* and *vicar*, where the endowment is loſt, this point is determined by *preſcription*; and in caſe the endowment remains, and doth not expreſsly mention wood, and yet that tythe hath been uſually taken by the *vicar*, the law will, by favourable conſtruction, either graft it upon ſome general expreſſion in the endowment, or elſe preſume that there might be a ſubſequent augmentation of the endowment of the *vicar*, by which he became entitled to *tythe-wood*. *Vide Gibſ. Cod. p.* 686.

whether a great or ſmall tythe.

That wood is a *predial* tythe, is plain, but whether *great* or *ſmall*, hath been a queſtion between the *parſons* and *vicars*; and it hath been reſolved, that if a vicar be only endowed with the ſmall tythes, and have, by reaſon thereof, always had tythe wood, in ſuch caſe it ſhall be accounted a *ſmall tythe*, otherwiſe it is to be accounted amongſt the *great tythes*. But this doth not alter the quality of the tythe; and the vicar's having received it may be evidence of a grant thereof having

ing been made ſubſequent to the endowment, although ſuch original grant is now loſt, but is not evidence that wood in itſelf is a *ſmall tythe*. *Vide Degge, p.* 2. *c.* 1.

How wood may be diſcharged from tythes.

Firſt; With regard to the age; *timber-trees*, of or above *twenty years growth*, are diſcharged by the ſtatute of *ſylva cædua*; *Secondly*; With regard to the uſe it is put to; *wood* for the owner's firing, hedging and fencing of the premiſes within the ſame pariſh, hath been *adjudged tythe-free*; but this is to be alleged, not abſolutely, that *per legem terræ* wood ſo applied ſhall not pay tythe, but *ſub modo*, that the parſon hath ſome conſideration for it, or at leaſt that the houſe is for maintenance of huſbandry, by reaſon of which the parſon hath *uberiores decimas*. *Vide* 3 *Cro. p.* 113. *Mod.* 683. *Litt.* 52. *Keb.* 319. *Palm.* 37. *Hetl.* 110.

Manner of tything wood.

In divers places they fell out the *tenth acre of wood* ſtanding; and ſo it may be by the *pole* or *perch*, or by the *tenth faggot* or *billet*, according as the *cuſtom* of the place hath been. *Vide Hob.* 350.

Wool.

There is no diſpute concerning the kind of tythe which *wool* yields, for it is agreed by all to be a *mixed ſmall tythe*. Nor is there any doubt but that it is *de jure* tytheable: however, for the bodies of ſheep killed, and ſpent in the houſe, no tythe ſhall be paid, yet the wool ſhall pay tythe. *Vide* 1 *Roll. Abr. p.* 646, 647. 3 *Bulſt. p.* 242. *Mod. p.* 911.

If there be under *ten pounds of wool*, a reaſonable conſideration ſhall be paid; becauſe being due *de jure*, a *modus* in *non decimando* cannot be allowed in any caſe. *Vide* 1 *Roll. Abr. p.* 687.

The ſtrict right of *tythe-wool* hath been limited by an allowance of the two following *moduſes* as good, viz. *Firſt*; The *tenth* part of the *wool* of all the ſheep which he had before *Lady-day*, in ſatisfaction of all the *wool* of ſuch ſheep as ſhould be brought into the pariſh after *Lady-day*; *Secondly*; To be diſcharged of tythe of thoſe he ſhould ſell but *two days* before the ſhearing, in

in conſideration that time out of mind he hath paid *tythe-wool* of thoſe which he bought but *two days* before the ſhearing. *Vide Gibſ. Cod. p.* 687.

As to the time of paying *tythe-wool de jure*, it is due when clipped; but by *preſcription* it may be ſet out all together at another time; and when the *ſpiritual* court diſallowed this plea, they were *prohibited*. *Vide* 1 *Cro. p.* 702. *Mod. p.* 910.

CHAP.

CHAP. V.

The manner of ſetting out, and taking and carrying away tythes, as ſettled by the common ſtatute and eccleſiaſtical law.

How tythes are to be ſet out.

A PERSON is bound, of *common right*, to cut down, and ſet out the tythes of his land: for example, a parſon made a collector of tythes, and that collector licenſed a pariſhioner to carry away his corn without ſetting forth of tythes, and determined *a void* licenſe. The laws of the church entitles the parſon to have notice given him; the *common law* conſiders ſuch notice as not neceſſary. The furtheſt they have gone is to declare a cuſtom of tything without view an abſurd cuſtom; and ſtatute 2 *Edw.* 6. *cap.* 13. *ſect.* 2. entitles a parſon, though not to notice, to a right of ſeeing it ſet out. *Vide Gibſ. Cod. p.* 688. *Noy*, 134. 1 *Roll. Abr.* 643. 2 *Vent.* 48.

When they are to be ſet out.

The time and manner of ſetting out tythes *(i. e. whether it is to be done when the things are in ſheaves or cocks, or ſhocks)* depends on the particular cuſtom of the place. The *common law* declares, that of *common right* the owner is obliged to do no more, in order to the tything of corn, than to bind it up in ſheaves. It being a *maxim*, that every *modus* muſt be ſomething for the advantage of the parſon, which the owner is not bound to do, the ſetting into cocks or ſhocks hath been offered as the foundation of a *modus*, when no other pretence could be found; and particularly *adjudged* a good conſideration for not tything the odd ſheaves under the number of *ten*. There are no *ancient* teſtimonies to make the tything in ſheaves the *common law* of tything. *Lyndwood* (who uſually diſtinguiſhes between what is due *de jure communi* and what *de conſuetudine)* ſets all the method of tything upon the ſame foot of cuſtom. *Vide Gibſ. Cod. p.* 688, 689. *See* 2 *Leon.* 70. *Latch.* 125. *Palm.* 440. 2 *Keb.* 36. *Siderf.* 280.

The

The tenth land of corn, *(inſtead of the tenth ſheaf or ſhock)* beginning with that land which is nigheſt to the church, hath been *adjudged* a good cuſtom; notwithſtanding it was alleged, that the occupiers, knowing which would fall to the ſhare of the parſon, did not till, manure or ſow it as they did the reſt; for this fraud (they ſaid) might be remedied by an action at *common law*. Might not the cuſtom as well be declared a cuſtom againſt reaſon, when the preſumption is ſo ſtrong, that in ſuch caſe the occupier will not beſtow equal care upon it as upon his own, and when it is ſo difficult to ſtate the degrees of care taken or required; and ſince, if due care be not taken, no remedy is left but what is worſe than the diſeaſe? *Vide Gibſ. Cod. p.* 689. *Mo. p.* 913.

It is reported to have been determined in the *Common Pleas*, that by the *civil law* the parſon ought to have his tythe by the *tenth ridge*. The *maxims* of *civil* and *canon law* are not uſually over-valued in our *temporal courts*; but the uſe which was made of this was, that the reaping, binding, and ſhocking, being (in conſequence of that doctrine) more than the owner was bound to do, theſe ſhould become a good *modus* to diſcharge him of tythe for the hay growing in the headlands. *Vide Gibſ. Cod. p.* 689. 2 *Leon.* 70.

What tythes are when ſet out.

Tythes being ſet out, or ſevered from the *nine parts*, become *lay chattels*. So held on this foundation, when the tythe of corn was ſet out in ſheaves, and the parſon would not take it, but prayed remedy in the *ſpiritual court*, a prohibition was granted; and when a ſequeſtration was prayed in the *temporal courts* of tythes not ſet out, the right of which was in controverſy, the party was told his requeſt had been reaſonable, if they had been ſevered from the *nine parts*. On the ſame principle, if after ſeverance they are carried away by a ſtranger, the remedy is in the *temporal courts*: and though it is otherwiſe, if carried away by the owner, becauſe his ſetting them out in order to carry them away, is deemed a fraudulent ſetting out. *Vide Gibſ. Cod. p.* 689. 2 *Leon.* 201. *Sav. c.* 71. 1 *Cro.* 607. *Noy*, 44. *Mo.* 502. 2 *Roll.* 440.

On whom the care of tythes fall when ſet out

After ſeverance it reſts upon the parſon, and not upon the owner of the land. It was determined in the caſe of *Dr. Bridgman*, that though the pariſhioner ought *de jure* to reap the corn, he is not bound to guard the tythes of the parſon; on the contrary, if the parſon does not carry them away in convenient time, an action on the caſe lies againſt him. But ſo, that the pariſhioner may neither bring ſuch action, nor put in his cattle, till he hath given notice to the parſon that they are ſet out. If tythes be ſpoiled, and the parſon ſeeks remedy in the *ſpiritual court*, and a prohibition is obtained upon *falſe* ſuggeſtions, a conſultation is provided in the Regiſter. *Vide Gibſ. Cod. p.* 689. *Noy*, 31.

On a caſe where the occupier, after ſeverance, took the *nine parts*, and turned his cattle into the meadows where the tythes were, which deſtroyed and conſumed the tythes, *Holt*, *Chief Juſtice*, ſaid, that though there was no obligation to give notice of the ſeverance, yet he thought the turning of cattle to the tythe made it a *fraudulent* ſeverance, and that a ſuit might be maintained for it in the *ſpiritual court*. *Vide Comyns*, *p.* 22.

When tythe ſet out, parſon may ſpread and dry them.

When the tythes are ſet forth, the parſon may of *common right* come himſelf, or his ſervants, and ſpread abroad, dry and ſtack his corn, hay, or the like, in any convenient place or places upon the ground where the ſame grew, till it be ſufficiently weathered, and fit to be carried into the barn. He muſt not take a longer time for the doing thereof than what is convenient and neceſſary, and what ſhall be deemed a convenient and neceſſary time; though the law doth not, nor can define, what is convenient and neceſſary time; for the quantity of the corn or hay, and the weather muſt determine that; and what ſhall in this, and all other caſes of the like nature, be ſaid to be a reaſonable and convenient time, is to be determined by the *jury*, if the point come in iſſue before a jury: if on a demurrer, or other matter of law, the court where the ſame is tried are to determine it. *Vide Degge*, *p.* 2. *c.* 14. *Str.* 245.

By

By *ſtatute* 2 *and* 3 *Edw.* 6. *c.* 13. *ſect.* 2. "If any per- Stat. 2 & 3 Ed. 6. cap. 13. ſect. 2.
"ſon carry away his corn or hay, or his other *predial*
"tythes, before the tythe thereof be ſet forth; or wil-
"lingly withdraw his tythes of the ſame, or of ſuch
"other things whereof *predial* tythes ought to be paid;
"and if any perſon do ſtop, or let the parſon, vicar,
"proprietor, owner, or other their deputies or farm-
"ers, to view, take, and carry away their tythes, as
"is aboveſaid, he ſhall forfeit double value, with
"coſts, to be recovered in the *eccleſiaſtical* court."

As to a convenient time for the parſon to carry away his tythes.

The parſon has a right to carry away his tythes; if he be obſtructed, he ſhall have a remedy in the *ſpiritual court*. The 8th *Jac.* 1. a conſultation was granted on this point, and *adjudged* a fraudulent ſetting out; which, tho' poſſibly a good reaſon, ſeems not to be a true one, but to be uſed on purpoſe to ſave the *maxim*, of tythes being a *lay-chattel* after ſetting out; ſince (without the help of that diſtinction) *ſtat.* 2 *Ed.* 6. *c.* 13. *ſect.* 2. doth in expreſs words give remedy before the *ſpiritual* judge, in caſe the parſon is ſtopped in carrying away his tythes; on which it was reſolved, (43 *Eliz. in Blackwell's caſe*) that the queſtion being in the *ſpiritual* court, whether the gate was locked, or open, no *prohibition* ſhould be granted. *Vide Gibſ. Cod. p.* 689. 1 *Cro.* 844.

The parſon may carry his tythes from the ground where they grew, either by the common way, or any ſuch way as the owner of the land uſed to carry away his *nine parts*. Where there are more ways than one, and the queſtion is, which is the right way, this is cognizable in the *temporal court*. *Vide Deg. p.* 2. *c.* 14.

If the owner of the ſoil, after he hath duly ſet forth his tythes, will ſtop up the ways, and not ſuffer the parſon to carry away his tythes, or to ſpread, dry, and ſtack them on the land, this is no good ſetting forth of his tythes without fraud, within the ſtatute: and the parſon may have an action on the ſaid ſtatute, and may recover the *treble value*; or may have an action on the caſe for ſuch diſturbance; or he may, if he will, break open the gate or fence which hinders him, and carry away his tythes. *Vide Degge, p.* 2. *c.* 14.

If this ſtep becomes neceſſary, he muſt be cautious that he commit no riot, nor break any gate, rails, lock or hedges, more than neceſſarily he muſt for his paſſage. *Vide Degge, p. 2. c. 24.*

When he comes with his carts, teams, or other carriages, to carry away his tythes, he muſt not ſuffer his horſes or oxen to eat and depaſture the graſs growing in the grounds where the tythes ariſe, much leſs the corn there growing or cut: but if his cattle (as cannot be avoided) do in their paſſage, againſt the will of their driver, ſnatch ſome of the graſs, this is excuſeable. *Vide Deg. p. 2. c. 14.*

The remedy where tythes remain too long after ſet out.

If tythes after ſet out remain too long on the land, the owner of the ſoil may take them *damage feaſant*; if he be ſued for them, in order to juſtify, he muſt ſet forth how long they had remained before he took them; and when they ſhall be ſaid to remain too long, is triable by the jury. *Vide Watſ. c. 54.*

An action on the caſe will lie againſt the parſon for his negligence in this behalf; but no action in ſuch caſe will lie, unleſs the pariſhioner has duly ſet forth his tythes, and hath alſo given notice to the parſon that they are ſo ſet forth. *Vide Deg. p. 2. c. 14. Lord Raym. p. 187.*

CHAP.

CHAP. VI.

The ſeveral remedies to be taken for recovery of Tythes by the common ſtatute and eccleſiaſtical law.

Where tythes were recoverable in old times.

IN old times tythes were recoverable in the *county-court*, where the biſhop or his deputy, and the ſheriff, did ſit as co-ordinate judges, there being at that time no ſeparate court of ordinary *eccleſiaſtical* juriſdiction. *Vide* 2 *Inſt.* 661.

When recoverable in the eccleſiaſtical courts.

By a conſtitution of Archbiſhop *Winchelſea*. "Foraſmuch as many are found, who are not willing freely to pay their tythes, we do ordain that the pariſhioners be admoniſhed *once*, *twice*, and *thrice*, to pay their tythes to God and the church; and if they do not amend, they ſhall *firſt* be ſuſpended from the entrance of the church, and ſo at laſt be compelled to pay their tythes by cenſures *eccleſiaſtical*, if it ſhall be neceſſary: and if they ſhall deſire a relaxation or abſolution of the ſaid ſuſpenſion, they ſhall be remitted to the ordinary of the place, to be abſolved and puniſhed in due manner." *Vide Lind.* 191.

13 Ed. 1. ſect. 4.

By the ſtatute of *circumſpecte agatis*, 13 *Edw.* 1. *ſtat.* 4. "The King to his judges ſendeth greeting; uſe yourſelves circumſpectly in all matters concerning the clergy, not puniſhing them if they hold plea in court chriſtian, in the caſe where a parſon doth demand of his pariſhioners oblations or tythes due and accuſtomed; in which caſe the ſpiritual judge ſhall have power to take knowledge, notwithſtanding the King's prohibition."

Accuſtomed.] By this act, *modus decimandi* and *real compoſition* are eſtabliſhed; for hereby are tythes divided into two parts; in *decimas debitas*, and that is, *quota pars*, the tenth part; and into *decimas conſuetas*, which are due by *cuſtom* and *uſage* in ſatisfaction for tythes; for which ſatisfaction, or *modus decimandi*, the

parſon may ſue in *court chriſtian*, and is warranted by this act: for the rule is, that the *modus* is to be ſued for in the *eccleſiaſtical court*, as well as the very tythe; and if it be allowed between the parties, they ſhall proceed there; but if the cuſtom be denied, it muſt be tried at the *common law*; and if it be found for cuſtom, then a conſultation muſt go; otherwiſe, the prohibition ſtands. The like is affirmed in caſe a jury, upon an iſſue joined in a prohibition on a *modus decimandi* find a different *modus*; ſince a *modus* is found, they ſhall not have conſultation. *Vide Gibſ. Cod.* 691. *cites Hob.* 247. *Noy*, 81. *Hetl.* 133. 1 *Vent.* 32.

The ground why the courts of *common law* prohibits the *ſpiritual Courts* from trying of *moduſes* are, that whereas every *modus* is leſs than the real value, the rule of the common law is, that leſs than the real value ſhall not be taken, and that a cuſtom to the contrary is void; and that the *eccleſiaſtical* and *temporal* laws differ in the times of limitations; *forty years* making a good cuſtom with the *firſt*; whereas, by the *ſecond*, it muſt be beyond the time of memory. *Vide Gibſ. Cod. p.* 691.

It has been held, that though the general rule of the *common law* is not to admit leſs than the real value, yet there are ſeveral exceptions, as in caſes of *perſonal*, and *ſmall tythe*; in which cuſtomary payments are allowed, without breach of conſcience; the *ſpiritual courts* have commonly allowed pleas of *modus decimandi*, and are ready to allow them; that the *averment* in the prohibition is not that they do take cognizance, but that the plea hath been offered and refuſed; which ſuppoſes, that if the plea be admitted, the prohibition ought not to go; that accordingly it hath been affirmed by *Doderidge and others*, that they may as well try the *modus* as the right of tythes, and that prohibition is not to be granted till the *ſpiritual court* either refuſe to admit the plea, or proceed to try it by methods different from the rule of the *temporal law*, as to the time of limitation, or number of witneſſes, or the like. *Lord Coke* contended for the contrary doctrine; it was declared by *Keling* and *Twiſden*, 20 *Car.* 2. in the caſe of the

the *Biſhop of Lincoln* againſt *Smith*, that in caſe one libel for a *modus decimandi*, if the *ſpiritual court* allow the plea they may try it; and *Coke*'s opinion againſt trying *penſions* claimed by *preſcription* in the *ſpiritual court*, they ſaid, was not warranted by the books. *Vide Gibſ. Cod.* 691. *Still. Eccleſ. Caſ. p.* 311.

By ſtatute of *Articuli Cleri*, 9 *Edw.* 2. *ſtat.* 1. *c.* 1. Stat. 9 Edw. 2. "Whereas laymen do purchaſe prohibitions generally "upon tythes, obventions, oblations, mortuaries; "the King doth anſwer to this article, that in tythes, "oblations, obventions, mortuaries, (when they are "propounded under theſe names) the King's prohibi- "tion ſhall hold no place, although for the long with- "holding of the ſame the money may be eſteemed a "ſum certain. But if a clerk, or a religious man, do "ſell his tythes, being gathered in his barn, or other- "wiſe, to any man for money, if the money be de- "manded before a *ſpiritual* judge, the King's prohibi- "tion ſhall lie; for by the ſale the *ſpiritual* goods are "made *temporal*, and the tythes turned into chattels."

By *ſtatute* 18 *Edw.* 3. *ſtat.* 3. *cap.* 7. "Whereas Stat. 18 Edw. 3. "writs of *ſcire facias* have been granted to warn "prelates, religious, and other clerks, to anſwer "*diſmes* in our *chancery*, and to ſhew if they have any "thing, or can any thing ſay, wherefore ſuch *diſmes* "ought not to be reſtored to the ſaid demandants, "and to anſwer as well to us as to the party, to ſuch "*diſmes*; ſuch writs from henceforth ſhall not be "granted, and the proceſs hanging on ſuch writs ſhall "be annulled and repealed, and the parties diſmiſſed "from the ſecular judges of ſuch manner of pleas."

Writs of ſcire facias.] This is a writ where one hath recovered debts or damages in the King's courts, and ſues not for execution within a *year* and a *day*; after which he ſhall have this writ to warn the party; who, coming not, or ſaying nothing to ſtay execution, a writ of *fieri facias* goes, commanding the ſheriff to levy the debts or damage, of his goods. *Vide Terms of the Law, head Scire and Fieri facias.*

To warn prelates, religious, and other clerks.] This *ſcire facias* was not brought againſt the poſſeſſors of the land for ſubſtraction of tythes, but againſt the prelates or other clerks, which took the tythes after they were ſevered. Commiſſions out of the *Chancery* were directed to certain perſons, giving them authority to inquire whether ſuch a *ſpiritual* perſon ought to have tythes of ſuch lands; whereupon inquiſitions were taken and returned: and if it were found for the *ſpiritual* perſon, upon this record, he might have a *ſcire facias* againſt any prelate, religious, or other clerk, that took them after ſeverance. *Vide* 2 *Inſt. p.* 640.

1 Rich. 2. c. 13. By *ſtat.* 1 *Rich.* 2. *c.* 13. "The prelates and clergy "of this realm do greatly complain them, for that "the people of holy church, purſuing in the *ſpiritual* "*court* for their tythes and their other things, which "of right ought, and of *old* times were wont to "pertain to the ſame *ſpiritual court*; and that the "judges of the holy church having cognizance in "ſuch cauſes, and other perſons thereof meddling ac-"cording to the law, be maliciouſly and unduly for "this cauſe indicted, impriſoned, and by the ſecu-"lar power horribly oppreſſed, and alſo inforced with "violence, by oaths and grievous obligations; and "many other means unduly compelled to deſiſt and "ceaſe utterly of the things aforeſaid, againſt the liber-"ties and franchiſes of holy church: wherefore it is "aſſented, that all ſuch obligations made or to be "made by *dureſs* or violence, ſhall be of no value. "And as to thoſe that by malice do procure ſuch in-"dictments, and to be the ſame indictors, after the "ſame indictees be ſo acquitted, ſuch procurers ſhall "ſuffer a year's impriſonment, and reſtore to the par-"ties their damages, and ſhall nevertheleſs make a "grievous fine unto the King. And the juſtices of "aſſize, or other juſtices, before whom ſuch indictees "ſhall be acquit, ſhall have power to enquire of "ſuch procurers and indictees, and duly to puniſh "them according to their deſert."

1 Rich. 2. c. 14. By *ſtatute* 1 *Rich.* 2. *c.* 14. "At what time that "any perſon of the holy church be drawn in plea in "the

" the *ſecular court* for his own tythes, taken by the
" name of goods taken away; and he which is ſo drawn
" in plea makes an exception, or alleges that the ſub-
" ſtance and ſuit of the buſineſs is only upon tythes,
" due of right, and of poſſeſſion to his church or other
" his benefice: In ſuch caſe, the general averment
" ſhall not be taken, without ſhewing ſpecially how
" the ſame was his *lay chattel*."

By 27 *Hen.* 8. *c.* 20. " When by the noiſe of the 27 Hen. 8. c. 20.
" diſſolution of monaſteries in this parliament, laymen
" took occaſion, upon trifling pretences, to withdraw
" their tythes, it was enacted as followeth: Foraſ-
" much as divers evil diſpoſed perſons inhabited in ſun-
" dry counties, cities, towns, and places of this realm,
" having no reſpect to their duties to Almighty God,
" but againſt right and good conſcience, having at-
" tempted to ſubſtract and with-hold in ſome places the
" whole, and in ſome places great part of their tythes and
" oblations, as well perſonal as predial, due unto God
" and holy church; and purſuing ſuch their deteſtable
" enormities and injuries, have attempted in late time
" paſt to diſobey and contemn the progreſs, laws, and
" decrees of the *eccleſiaſtical courts* of this realm, in more
" temerarious and large manner than before this time
" hath been ſeen: for reformation of which ſaid inju-
" ries, and for unity and peace to be preſerved amongſt
" the King's ſubjects of this realm, our Sovereign
" Lord the King, being ſupreme head on earth (under
" God) of the church of England, willing the *ſpiritual*
" rights and duties of that church to be preſerved,
" continued and maintained, hath ordained and *enacted*
" by authority of this preſent parliament, that every
" of his ſubjects of this realm, according to the
" *eccleſiaſtical* laws and ordinances of his church
" of *England*, and after the laudable uſes and cuſ-
" toms of the pariſh or other place where he
" dwells or occupies, ſhall yield and pay his
" tythes and offerings, and other duties of holy
" church; and that for ſuch ſubſtractions of any the
" ſaid tythes and offerings, or other duties, the parſon,
" vicar, curate, or other party in that behalf grieved,
" may, by due proceſs of the King's *eccleſiaſtical laws*

" of

" of the church of *England*, convene the perſon offend-
" ing before his ordinary, or other competent judge of
" this realm, having authority to hear and determine
" the right of tythes, as alſo to compel the ſame per-
" ſon offending to do and yield his duty in that be-
" half: and in caſe the ordinary of the dioceſe, or his
" commiſſary, or the archdeacon, or his official, or any
" other competent judge aforeſaid, for any contempt,
" contumacy, diſobedience, or other miſdemeanor of
" the party defendant, ſhall make information and re-
" queſt to any of the King's moſt honourable coun-
" cil, or to the juſtices of the peace of the ſhire where
" ſuch offender dwells, to aſſiſt and aid the ſame ordi-
" dinary, commiſſary, archdeacon, official or judge,
" to order or reform any ſuch perſon in any cauſe be-
" fore rehearſed; that then he of the King's ſaid ho-
" nourable council, or ſuch two juſtices of the peace,
" *(whereof one to be of the quorum)* to whom ſuch in-
" formation or requeſt ſhall be made, ſhall have power
" to attach, or cauſe to be attached, the perſon againſt
" whom ſuch information or requeſt ſhall be made,
" and to commit him to *ward*, there to remain with-
" out *bail* or *mainprize*, until he ſhall have found ſuf-
" ficient ſurety to be bound by recognizance, or other-
" wiſe before the King's ſaid counſellor, or juſtice of
" the peace, or any other like counſellor, or juſtice of
" the peace, to the uſe of our ſaid Lord the King, to
" give due obedience to the proceſs, proceedings, de-
" crees, and ſentences of the *eccleſiaſtical court* of this
" realm, wherein ſuch ſuit or matter for the pre-
" miſes ſhall depend, or be, and that every of the
" King's ſaid counſellors, or two juſtices of the peace,
" whereof the one to be of the *quorum*, as is aforeſaid,
" ſhall have power to take and record ſuch recogni-
" zance and obligations."

" SECT. 2. " PROVIDED, That this ſhall not
" extend to any inhabitant of the city of *London*,
" concerning any tythe, offering, or other *eccleſiaſtical*
" duty; grown and due to be paid within the ſaid
" city; becauſe there is another order made for the
" payment of tythes and other duties within the ſaid
" city."

SECT.

SECT. 3. " PROVIDED ALSO, That all per-
" ſons, being parties to any ſuch ſuit, may have their
" lawful action, demand or proſecution, appeals, pro-
" hibitions, and all other their lawful defences and re-
" medies in every ſuit, according to the ſaid eccleſiaſtical
" laws, and laws and ſtatutes of this realm, in as ample
" manner as they might have had if this act had not
" been made."

SECT. 1. *Shall have power to attach.*] *Sanchee and others, quakers*, were cited into the *eccleſiaſtical court*, to anſwer there upon their ſolemn affirmation, &c. concerning tythes with-held by them from the parſon of the pariſh, and for not anſwering, the commiſſary, according to *ſtatute of* 27 *H.* 8. *cap.* 20. certifies their contumacy to two juſtices of peace, by whoſe warrant they were ſeized, and committed to priſon; and being brought by *habeas corpus* into the King's Bench, it was moved, that they might be diſcharged, becauſe the new act concerning the affirmation of quakers gives the parſon a remedy to recover tythes by diſtreſs, by virtue of a warrant of a juſtice of peace: then where a ſtatute gives remedy, the juriſdiction of the *ſpiritual court* is taken away, unleſs it be ſaved by the ſame ſtatute. 5 *Co.* 73. 6 *Jones*, 320. ſtatutes were cited where the juriſdiction of the *ſpiritual court* was ſaved, as 23 *Eliz. cap.* 1. 1 *Eliz. cap.* 2. In the ſame manner in ſtatute againſt *uſury*, 3 *Inſt.* 152. 2 *Inſt.* 657. and from thence it was inferred, that it was the opinion of thoſe parliaments, that the *ſpiritual juriſdiction* would have been taken away by theſe acts, if it had not been ſaved by them. *Per curiam.* This laſt act ſeems to be only an accumulative remedy, and not to repeal the act of *Hen.* 8. In many caſes the *common law* and *eccleſiaſtical courts* have a concurrent juriſdiction; as if a penſion be payable out of a parſonage by *preſcription*, the remedy for this is either in the *ſpiritual court*, or *annuity* lies for it at *common law*; tho' *Coke* ſays the contrary in 2 *Inſt.* in his Comment on *ſtatute de circumſpecte agatis.* But where the nature of the offence is altered by a ſtatute, and a new penalty inflicted, then, after the party has been tried at *common law*, and condemned, the *eccleſiaſtical court* ſhall not proceed againſt him. As if a man be

be convict at *common law* for having two wives, or hath been adjudged the reputed father of a baſtard ſon, &c.

Exception was taken to the return, becauſe it is ſaid, that *Sanchee*, &c. were impriſoned for contempt in a ſuit for detention of tythes or other *eccleſiaſtical* duties; and it ought to appear for which the ſuit was ſpecially. For though the ſtatute that gives this remedy is in general words, yet, in the return the cauſe of impriſonment ought to be certainly expreſſed, to the end that it may appear to the court that it was an *eccleſiaſtical duty*, for which they are impriſoned. And of this opinion was the whole court, and therefore the quakers were diſcharged out of cuſtody. *Vide Lord Raym.* 323. *Hil.* 9. *Wil.* 3.

32 H. 8. cap. 7. ſect. 1 and 2.

By *ſtatute* 32 *H.* 8. *c.* 7. *ſect.* 1, 2. (which was alſo made upon occaſion of the diſſolution of monaſteries, and which was chiefly intended to enable laymen, that, by the diſſolution, has eſtates or intereſts in parſonages, or vicarages impropriate, or otherwiſe, in tythes, to ſue for ſubſtraction of tythes in the eccleſiaſtical courts) *It is enacted* as followeth: "Where divers perſons inhabiting in ſundry counties and places of this realm, not regarding their duties to Almighty God, and to the King our Sovereign Lord, but in a few years paſt more contemptuouſly and commonly preſuming to offend and infringe the good and wholeſome laws of this realm, and gracious commandments of our Sovereign Lord, than in times paſt hath been ſeen or known, have not letted to ſubſtract and withdraw the lawful and accuſtomed tythes of corn, hay, paſturages, and other ſort of tythes and oblations commonly due to the owners, proprietaries and poſſeſſors of the parſonages, vicarages, and other eccleſiaſtical places within this realm; being the more encouraged thereto, for that divers of the King's ſubjects, being lay-perſons, having parſonages, vicarages, and tythes to them and their heirs, or to the heirs of their bodies, or for term of life or years, cannot by the order and courſe of the *eccleſiaſtical laws* of this realm, ſue in any eccleſiaſtical court for the "wrongful

" wrongful with-holding and detaining of the ſaid " tythes or other duties, nor can by the order of the " common laws of this realm have any due remedy " againſt any perſon, his heirs or aſſigns, that wrong- " fully detaineth or with-holdeth the ſame; by occa- " ſion whereof much controverſy, ſuit and variance " is like to enſue among the King's ſubjects, to the " great damage and decay of many of them, if con- " venient and ſpeedy remedy be not provided: *It is* " *therefore enacted*, That all perſons of this realm, " of what eſtate, degree or condition ſoever they be, " ſhall fully, truly, and effectually divide, ſet out, " yield, or pay, all and ſingular tythes and offerings " aforeſaid, according to the lawful cuſtoms and " uſages of pariſhes and places, where ſuch tythes or " duties ſhall ariſe or become due; and if any perſon " of his ungodly and perverſe will, ſhall detain and " with-hold any of the ſaid tythes or offerings, or any " part thereof, then the perſon or perſons, being " *eccleſiaſtical* or *lay*, having cauſe to demand the ſaid " tythes or offerings, being thereby wronged or griev- " ed, ſhall and may convent the perſon ſo offending, " before the ordinary, his commiſſary, or the compe- " tent miniſter or lawful judge of the place where " ſuch wrong ſhall be done, according to the *eccleſi-* " *aſtical laws*; and in every ſuch cauſe or matter of " ſuit, the ſame ordinary or other judge, having the " parties or their lawful procurators before him, ſhall " proceed to the examination, hearing, and determina- " tion of every ſuch cauſe or matter, ordinarily or " ſummarily, according to the courſe and the proceſs " of the ſaid *eccleſiaſtical laws*; and thereupon give " ſentence accordingly."

Every perſon to pay tythes according to cuſtom of the pariſh.

Sect. 3. " And if any of the parties ſhall appeal " from the ſentence, order, and definitive judgment " of the ſaid ordinary, or other competent judge as " aforeſaid, then the ſame judge ſhall, upon ſuch ap- " pellation made, adjudge to the other party the rea- " ſonable coſts of his ſuit therein before expounded; " and ſhall compel the ſame party appellant to ſatisfy " and pay the ſame coſts ſo adjudged, by compulſory " proceſs and cenſures of the ſaid laws eccleſiaſtical; " taking ſurety of the other party to whom ſuch coſts

" ſhall

" ſhall be adjuded and paid, to reſtore the ſame coſts " to the party appellant, if afterwards the principal " cauſe of that ſuit of appeal ſhall be adjudged againſt " the ſame party to whom the ſame coſts ſhall be " yielded: and ſo every ordinary or other competent " judge *eccleſiaſtical* ſhall adjudge coſts to the other par- " ty, upon every appeal to be made in a ſuit or cauſe of " ſubſtraction or detention of any tythes or offer- " ings, or in any other ſuit to be made concerning " the duty of ſuch tythes or offerings."

SECT. 4. " And if any perſon, after ſuch ſentence " definitive given againſt him, ſhall obſtinately and " wilfully refuſe to pay his tythes or duties, or ſuch " ſums of money ſo adjudged, wherein he ſhall be " condemned for the ſame; it ſhall be lawful for two " juſtices of the peace for the ſame ſhire, whereof one " to be of the *quorum*, upon information, certificate " or complaint to them made in writing by the ſaid " *eccleſiaſtical* judge that gave the ſame ſentence, to " cauſe the ſame party ſo refuſing to be attached and " committed to the next gaol, and there to remain " without *bail* or *mainprize*, till he ſhall have found " ſufficient ſureties, to be bound by recognizance or " otherwiſe, before the ſame juſtices, to the uſe of " our Lord the King, to perform the ſaid definitive " ſentence and judgment."

SECT. 5. " PROVIDED, That no perſon ſhall " be ſued, or otherwiſe compelled to pay any tythes, " for any manors, lands, tenements, or other hereditaments, which by the laws or ſtatutes of this realm " are diſcharged, or not chargeable with the payment " of any ſuch tythes.

SECT. 6. " PROVIDED ALSO, That this ſhall " not in any wiſe bind the inhabitants of the city of " London, and ſuburbs of the ſame, to pay their " tythes and offerings within the ſame city and ſub- " urbs, otherwiſe than they ought to have done " before."

SECT. 7. " And in all caſes where any perſon ſhall " have any eſtate of inheritance, freehold, term, right " or

" or intereſt in any parſonage, vicarage, portion, " penſion, tythes, oblations, or other *eccleſiaſtical* or " *ſpiritual* profits, which ſhall be made *temporal*, or " admitted to be in *temporal* hands, and *lay* uſes and " profits by the laws of the ſtatutes of this realm, ſhall " be diſſeiſed, deforced, wronged, or otherwiſe kept " or put from their lawful inheritance, eſtate, ſeiſin, " poſſeſſion, occupation, term, right or intereſt there- " in, by any other perſon claiming to have intereſt in, " or title to the ſame; the perſon ſo diſſeiſed, de- " forced, or wrongfully kept or put out, his heirs, his " wife, and ſuch other to whom ſuch injury and " wrong ſhall be done, may have their remedy in the " King's temporal courts, or other temporal courts, as " the caſe ſhall require, for the recovery or obtain- " ing of the ſame, by writs original of *præcipe quod* " *reddat*, aſſize, of *novel diſſeiſin*, *mordanceſtor*, *quod ei* " *deforceat*, writs of dower, or other writs original, " as the caſe ſhall require, to be deviſed and granted " in the King's court of *Chancery*, in like manner and " form as they might have had for lands, tenements, " or other hereditaments, in ſuch manner to be de- " manded; and writs of *covenants*, and other writs for " fines to be levied, and all other aſſurances to be had " of the ſame, ſhall be granted in the ſaid *Chancery*, " according as hath been uſed for fines to be levied, " and aſſurance to be had of lands, tenements, or " other hereditaments."

SECT. 8. " PROVIDED, That this ſhall not " give any remedy, cauſe of action or ſuit, in the " courts *temporal*, againſt any perſon who ſhall refuſe " to ſet out his tythes, or ſhall with-hold or refuſe to " pay his tythes or offerings; but that in all ſuch " caſes, the party being *eccleſiaſtical* or *lay*, having " cauſe to demand, or have the ſaid tythes or offer- " ings, and thereby wronged or grieved, ſhall have " his remedy for the ſame in the *ſpiritual* courts, ac- " cording to the ordinance in the firſt part of this act " mentioned, and not otherwiſe."

By *ſtat.* 2 *and* 3 *Edw.* 6. *c.* 13. the aforeſaid acts of 27 *H.* 8. *c.* 20. and 32 *H.* 8. *c.* 7. ſhall ſtand in full force: and moreover, *it is further enacted* as followeth, viz. 2 and 3 Edw. 6, cap. 13.

viz. SECT. 1. " All perſons ſhall truly and juſtly, " without fraud or guile, divide, ſet out, yield and " pay all manner of the *predial* tythes, in their pro- " per kind, as they riſe and happen, in ſuch man- " ner and form as hath been of right yielded and paid " within *forty years* next before the making of this " act, or of right or cuſtom ought to have been " paid; and no perſon ſhall take or carry away any " ſuch or like tythes, which have been yielded or paid, " within the ſaid *forty years*, or of right ought to have " been paid, in the place or places tytheable of the " ſame, before he hath juſtly divided or ſet forth " the tythe thereof, the *tenth part* of the ſame, or " otherwiſe agreed for the ſame tythes with parſon, " vicar, or other owner, proprietary, or farmer of the " ſame tythes, under the pain of forfeiture of *treble* " *value* of the tythes ſo taken or carried away."

SECT. 2. " At all times whenſoever, and as often " as any *predial* tythes ſhall be due at the tything of " the ſame, it ſhall be lawful to every party to whom " any of the ſaid tythes ought to be paid, or his de- " puty, or ſervant, to view and ſee their ſaid tythes to " be juſtly and truly ſet forth and ſevered from the " *nine parts*; and the ſame quietly to take and carry " away: and if any perſon carry away his corn or " hay, or his other *predial* tythes, before the tythe " thereof be ſet forth, or willingly withdraw his tythes " of the ſame, or of ſuch other things whereof *predial* " tythes ought to be paid; or do ſtop or let the parſon, " vicar, proprietor, owner, or other their deputies or " farmers, to view, take, and carry away their tythes, " as is above ſaid; by reaſon whereof the ſaid tythe " or tenth is loſt, impaired or hurt; then, upon due " proof thereof be made before the *ſpiritual* judge, " or any other judge to whom heretofore he might " have made complaint, the party ſo carrying away, " withdrawing, letting, or ſtopping, ſhall pay the " *double* value of the tenth or tythe ſo taken, loſt, " withdrawn or carried away, over and beſides the " coſts, charges and expences of the ſuit, in the ſame: " the ſame to be recovered before the *eccleſiaſtical* judge, " according to the King's *eccleſiaſtical laws*."

SECT.

SECT. 4. "PROVIDED, That no perſon ſhall "be ſued, or otherwiſe compelled to yield, give, or "pay, any manner of tythes, for any manors, lands, "tenements, or hereditaments, which by the laws "and ſtatutes of this realm, or by any privilege or "preſcription, are not chargeable with the payment "of any ſuch tythes, or that be diſcharged by any "compoſition real."

SECT. 13. "And if any perſon do ſubtract or "withdraw any manner of tythes, obventions, pro-"fits, commodities, or other duties, (before men-"tioned) or any part of them, contrary to the true "meaning of this act, or of any other act heretofore "made; the party ſo ſubtracting, or withdrawing the "ſame, may be convented and ſued in the King's "*eccleſiaſtical court*, by the party from whom the ſame "ſhall be ſubtracted or withdrawn; to the intent the "King's *eccleſiaſtical* judge may hear and determine the "ſame, according to the King's *eccleſiaſtical* laws: "and it ſhall not be lawful to the parſon, vicar, pro-"prietor, owner, or other their farmers or deputies, "contrary to this act, to convent or ſue ſuch with-"holder of tythes, obventions, and other duties afore-"ſaid, before any other judge than *eccleſiaſtical*. And "if any archbiſhop, biſhop, chancellor, or other judge "*eccleſiaſtical*, give any ſentence in the aforeſaid cauſes "of tythes, obventions, profits, emoluments, and "other duties aforeſaid, or in any of them, (and no "appeal or prohibition hanging) and the party con-"demned do not obey the ſaid ſentence, it ſhall be "lawful to every ſuch judge eccleſiaſtical to excom-"municate the ſaid party, ſo as aforeſaid condemned, "and diſobeying: In which ſentence of excommu-"nication, if the ſaid party excommunicate wilfully "ſtand, and endure ſtill excommunicate, but the "ſpace of *forty days* next after, upon denunciation "and publication thereof in the pariſh church, or the "place or pariſh where the party ſo excommunicated "is dwelling, or moſt abiding, the ſaid judge *eccleſi-*"*aſtical* may then, at his pleaſure, ſignify to the King "in his court of *Chancery*, of the ſtate and condition "of the ſaid party ſo excommunicate, and thereupon "require proceſs *de excommunicato capiendo*, to be

" awarded againſt every perſon as hath been ſo excom-
" municate."

SECT. 14. " And if the party in ſuch caſe ſhall " ſue for a prohibition, he ſhall, before any prohibi-
" tion granted, deliver to ſome of the juſtices or judges
" of the court where he demandeth prohibition, a
" true copy of the libel, ſubſcribed by his hand; and
" under the copy of the ſaid libel ſhall be written the
" ſuggeſtion whereof he demandeth the prohibition:
" and in caſe the ſaid ſuggeſtion, by two honeſt and
" ſufficient witneſſes at leaſt, be not proved true in the
" court where the ſaid prohibition ſhall be ſo granted,
" within ſix months next following after ſaid prohi-
" bition ſhall be ſo granted and awarded; then the
" party that is letted or hindered of his ſuit in the
" *eccleſiaſtical court* by ſuch prohibition ſhall, upon his
" requeſt and ſuit, without delay, have a conſulta-
" tion granted by the ſaid court; and ſhall alſo reco-
" ver double coſts and damages, againſt the party
" that ſo purſued the prohibition, to be aſſigned or
" aſſeſſed by the ſame court; for which coſts and da-
" mages the party may have an action of debt."

SECT. 15. " PROVIDED, That nothing herein " ſhall extend to give any miniſter or judge eccleſi-
" aſtical, any juriſdiction to hold plea of any matter,
" cauſe, or thing, contrary to the *ſtatute of Weſtminſter*,
" 2. *c.* 5. the *ſtatutes of articuli cleri*, *circumſpecte agatis*,
" *ſylva cædua*, the *treatiſe de regia prohibitione*, nor
" againſt the *ſtatute of* 1 *Edw.* 3. *c.* 10. nor to hold
" plea in any matter whereof the King's court of right
" ought to have juriſdiction."

Truly and juſtly, without fraud or guile.] *See ſect.* 1. of the preceding ſtatute. In the caſe of *Heale* and *Sprat*, *Tri.* 44. *Eliz.* in a prohibition; the caſe was, *Heale* did ſet out his *predial* tythes, and divided them juſtly from the nine parts, and ſoon after carried away the ſame. *Sprat* ſued for a ſubtraction of the ſame in the *eccleſiaſtical court*. *Heale* pleaded that he had ſet them out, as above; whereupon *Sprat* ſaid, that preſently after his ſetting out, he carried the ſame away, to the defrauding of the ſtatute. *Adjudged*, that this was *fraud* and

and *guile* within this act; albeit he did juſtly divide the ſame within the letter of this law. It was further reſolved, that if the owner of the corn before ſeverance grant the ſame to another, of intent that the grantee ſhould take away the ſame, to the end to defraud the parſon of his tythe, this is *fraud* and *guile* within this ſtatute. *Vide* 2 *Inſt.* 649.

Predial tythes.] This branch of the ſtat. extends only to *predial tythes:* thus, in the caſe of *Boot* and *Southraie*, *E.* 1. in *debt* on this ſtatute, by the parſon of the church, for not ſetting forth of the tythes of *cheeſe*, *calves*, *lambs*, *cherries*, and *pears*, to have the *treble value*; the defendant pleaded *nihil debet*, and it was found againſt him; and it was moved in arreſt of judgment, that the ſaid tythes of *cheeſe* or *calves*, and *lambs*, were not *predial tythes*, and therefore not within this branch of the ſtatute; and this act is *penal*, and ſhall not be taken by *equity*; which was allowed by the whole court. *Vide* 2 *Inſt.* 649.

Within forty years next before the making, as this act.] This time of *forty years* is here ſet down, becauſe *forty years* in the *eccleſiaſtical court* about tythes make a *preſcription*. *Vide* 2 *Inſt.* 646. 1 *Ought.* 263.

Or of right or cuſtom ought to have been paid.] The ſenſe of theſe words of right ought to have been paid, is of tythes to be yielded in *ſpecie* within *forty years*; and the ſenſe of the words of right or cuſtom is, by rightful cuſtom, *de modo decimandi*. *Vide* 2 *Inſt.* 650.

Under the pain of forfeiture of treble value of the tythes ſo taken or carried away.] This branch doth not give the forfeiture to any perſon in certain; and therefore it was pretended, that the forfeiture ſhould be given to the King; and the Attorney-General, *Hil.* 29 *Eliz.* did exhibit an information in the *Exchequer* againſt one *Wood*, a pariſhioner of *Jelington*, in the county of *Cambridge*, for this *treble* forfeiture, for carrying away his tythes before they were juſtly divided. The defendant pleaded *not guilty*; and by a jury at the bar he was found guilty; and in arreſt of judgment it was moved, that in this caſe the forfeiture was not given to

the King; for that the words of the act be, under the pain of forfeiture of *treble value* of the tythes ſo taken away: and whenſoever a forfeiture is given againſt him, that doth diſpoſſeſs the owner of his property, as here he doth of his tythes, there the forfeiture is given to the party grieved or diſpoſſeſſed; and the rather, for that this is an additional law, and made for the benefit of the proprietor of the tythes; and ſo adjudged by *Manwood* and the whole court of *Exchequer*; and this was the firſt leading caſe, that was adjudged upon this point; and ever ſince it hath been received for law, that the party intereſted in the tythes ſhall in an action of *debt* recover the *treble value*. *Vide* 1 *Inſt.* 159. 2 *Inſt.* 650.

The *treble value* only, and not the tythes themſelves, nor any ſatisfaction for them, may be recovered in the *temporal court:* that being out of the juriſdiction of thoſe courts, and wholly in the *ſpiritual court*; which is the reaſon why in all ſuits upon this ſtatute the action is not laid for ſubtraction of tythes, but for a contempt of the ſtatute of not ſetting them out; and being a contempt, the action dies with him who committed the contempt, and doth not lie againſt his executor. *Vide Gibſ. Cod. p.* 697. 1 *Vern.* 60.

Held, that an action grounded on this ſtatute for not ſetting forth of tythes, is not within the *ſtatute of limitations*; that not extending to actions grounded on acts of parliament; therefore the plaintiff is not by law confined to *ſix years*, or to any other time certain, within which to bring his action. *Vide Watſ. cap.* 58.

Determined, that this ſtatute, which gives *treble damages*, does not allow the jury to give other damages. No coſts being given by the ſtatute; the jury can aſſeſs no coſts. *Vide Mo.* 915.

Neither *damages* nor *coſts* can be recovered with the *treble value*, becauſe ſtatute has not expreſsly given them, except that by the ſtatute 8 & 9 *W. c.* 11. IT IS ENACTED, That in all actions of *debt* on the ſtatute for not ſetting forth of tythes, wherein the *ſingle value* or *damage* found by the jury ſhall not exceed the

ſum of *twenty nobles:* the plaintiff obtaining judgment, or an award of execution, after plea pleaded, or demurrer joined therein, ſhall recover his *coſts of ſuit*; and if the plaintiff ſhall become *nonſuit*, or ſuffer a *diſcontinuance*, or a *verdict* ſhall paſs againſt him, the defendant ſhall recover his coſts.

Shall pay the double value.] *See ſect.* 2. The reaſon why only the *double value* is, by this branch of the ſtatute, to be recovered in the *eccleſiaſtial court*, where, by the former branch, the parſon at the *common law* ſhall recover the *treble*, is, that in the *eccleſiaſtical court* he ſhall recover the tythes themſelves; and therefore the value recovered in the *eccleſiaſtical court* is equivalent with the *treble* forfeiture at *common law*. *Vide* 2 *Inſt.* 650.

Over and beſides the coſts, charges and expences.] So as the ſuit in the *eccleſiaſtical court* is more advantageous than the ſuit for the *treble* forfeiture at the *common law*. At the *common law* he ſhall recover no coſts; but he ſhall recover in the *eccleſiaſtical court*, his *coſts*, *charges*, and *expences*. *Vide* 2 *Inſt.* 651.

May be convented.] *See ſect.* 13. In the caſe of *Machin* and *Molton*, *Eaſt.* 11 *W.* 3. on motion for the diſcharge of a rule, by which prohibition was granted, unleſs cauſe ſhewed, to the Conſiſtory Court of the Archbiſhop of *York*; where *Molton*, rector of the church of *South Collingham*, in the dioceſe of *York*, preferred a libel againſt *Machin* for ſubtraction of tythes; and the motion for the prohibition was grounded on a ſuggeſtion that *Machin* lived within the dioceſe of *Lincoln*, and therefore ought not to be cited out of the dioceſe where he lived, by *ſtatute* 23 *H.* 8. *c.* 9. the cauſe which was ſhewed to the court to diſcharge the rule was, *Machin* had lands within the dioceſe of *York*, namely, in the pariſh of *South Collingham*; for the tythes of corn growing on which lands *Molton* libelled in the Conſiſtory Court of *York*; and when the citation was ſerved, *Machin* was there, though he lived generally within the dioceſe of *Lincoln*. *Holt*, *Chief Juſtice*, *held*, That if a man lives

within the dioceſe of *A*, and occupies lands in the dioceſe of *B*, if he ſubtracts tythes in *B*, he may be cited and ſued there; and it is not within the ſaid ſtatute; for when he occupies lands in *B*, that makes him an inhabitant there, and out of the intent of the ſtatute; and by *ſtatute* 32 *H.* 8. *c.* 7. *ſect.* 2. the ſuit for withholding of tythes in expreſs words is appointed to be before the ordinary of the place where the wrong was done. *Vide Lord Raym.* 452. 534.

By two honeſt and ſufficient witneſſes at leaſt.] *See Sect.* 14. This clauſe was made in favour of the clergy, for proof to be made by witneſſes, which they had not at the *common law*. If the ſuggeſtion be in the *negative*, as if the proprietary of a parſonage impropriate ſue for tythes, and the cauſe of the ſuggeſtion be, that the parſonage is not impropriate; or if a parſon ſue for tythes of lands in his pariſh, and the party ſue for a prohibition; for that the land lies not in that pariſh, or that the parſon that ſue for tythes was not inducted, or any the like cauſe, in the negative, or any matter of fact, he ſhall not produce any witneſſes by force of this branch, becauſe a negative cannot be proved: and therefore a prohibition upon cauſes in the negative remains as it was at the *common law*. *Vide* 2 *Inſt.* 662.

Proved true.] It is ſufficient in this caſe that enough is proved on which to ground a prohibition, though the ſuggeſtion be not ſhewn to be ſtrictly and wholly true. In a caſe where the ſuggeſtion was for *twenty acres of paſture*, and as many acres of *wood* in lieu of tythes, and proof was only made of the wood; or where the ſuggeſtion was for *wool* and *lamb*, and the witneſſes only proved as to the *lamb*; or for *a hundred acres*, when they were only *ſixty*; or for *twenty ſhillings* by way of *modus*, where the ſum was *forty ſhillings*; in theſe caſes, the proofs were adjudged to be ſufficient, becauſe enough was proved to ſhew, that the *court chriſtian* ought not to hold plea thereof. If proof is neither made of the *modus laid*, nor of any other *modus*, then the ſuggeſtion is not proved. *Vide Gibſ.* 699.

Within

Within ſix months.] If there is no certainty in the firſt proof, it cannot be ſupplied by good proof after the *ſix months*; but if good proof is made within the time, it may be certified after the time. *Vide Gibſ. p.* 700.

Six months.] That is, *ſix calendar months*; and not to be reckoned by *twenty-eight days* to the month. *Vide* 2 *Salk. p.* 554.

Six months next following.] Which muſt be computed from the *teſte* of the writ, and not *ſix months* in the term time only, but the vacation ſhall be included as part of the time. *Vide* 2 *Salk.* 554. *Lord Raym.* 1172.

Have a conſultation granted.] After which the party may have a new prohibition on the ſame libel; for *ſtatute* 50 *Edw.* 3. againſt prohibition after conſultation extends not to thoſe conſultations which are granted on the matter of the ſuggeſtion. *Vide Gibſ. p.* 700.

By *ſtat.* 7 & 8 *W.* 3. *c.* 6. *ſect.* 6. For the more eaſy and effectual recovery of ſmall tythes, and the value of them, where the ſame ſhall be unduly ſubtracted and detained, where the ſame do not amount to above the yearly value of forty ſhillings from any one perſon, it is enacted, "That all perſons ſhall well and truly "ſet out and pay all and ſingular the tythes, com- "monly called *ſmall tythes*, and compoſitions and "agreements for the ſame, with all offerings, obla- "tions, and obventions, to the ſeveral rectors, vicars, "and other perſons to whom they ſhall be due in their "ſeveral pariſhes, according to the rights, cuſtoms, "and preſcriptions commonly uſed within the ſaid "pariſhes reſpectively; and if any perſon ſhall ſub- "tract or withdraw, or any ways fail in the true "payment of ſuch ſmall tythes, offerings, oblations, "obventions, or compoſitions, by the ſpace of twenty "days at moſt after demand thereof, it ſhall be law- "ful for the perſon to whom the ſame ſhall be due to "make his complaint in writing to two or more juſ- "tices of the peace within that county, place, or di- "viſion,

7 & 8 W. 3. cap. 6.

" viſion, where the ſame ſhall grow due; neither of " which juſtices is to be patron of the church or cha- " pel whence the ſaid tythes ſhall ariſe, nor any ways " intereſted in ſuch tythes, offerings, oblations, ob- " ventions, or compoſitions aforeſaid."

Sect. 2. " And on ſuch complaint the ſaid juſ- " tices ſhall ſummon in writing under their hands and " ſeals, by reaſonable warning, every ſuch perſon " againſt whom ſuch complaint ſhall be made; and " after his appearance, or upon default of appearance, " the ſaid warning or ſummons being proved before " them upon oath, the ſaid juſtices ſhall proceed to " hear and determine the ſaid complaint; and upon " the proofs, evidences, and teſtimonies produced " before them, in writing under their hands and " ſeals adjudge the caſe, and give ſuch reaſonable " allowance and compenſation for ſuch tythes, obla- " tions, and compoſitions ſo ſubtracted or withheld, " as they ſhall judge to be juſt and reaſonable, and " all ſuch coſts and charges not exceeding *ten ſhillings*, " as upon the merits of the cauſe ſhall appear juſt."

Sect. 3. " If any perſon ſhall refuſe or neglect, for " the ſpace of ten days after notice given, to pay or " ſatisfy any ſuch ſum of money, as upon ſuch com- " plaint and proceeding ſhall by two ſuch juſtices be " adjudged as aforeſaid; in every ſuch caſe, the con- " ſtables and church-wardens of the ſaid pariſh, or " one of them, ſhall, by warrant under the hands and " ſeals of the ſaid juſtices to them directed, diſtrain " the goods and chattels of the party ſo refuſing or " neglecting as aforeſaid; and after detaining them, " [not leſs than *four days*, nor more than *eight*, by " *ſtat.* 37 *Geo.* 2. *c.* 20.] in caſe the ſaid ſum adjudg- " ed, together with reaſonable charges of making " and detaining the ſaid diſtreſs, be not tendered or " paid by the ſaid party in the mean time, ſhall make " public ſale thereof, and pay to the party complain- " ing ſo much of the money ariſing by ſuch ſale as " may ſatisfy the ſaid ſums ſo adjudged, retaining to " themſelves ſuch reaſonable charges for making and " keeping the ſaid diſtreſs as the ſaid juſtices ſhall " think fit; and alſo deducting their reaſonable

" charges

" charges of ſelling the ſaid diſtreſs; returning the " overplus (if any ſhall be) to the owner upon de- " mand. *Stat.* 27 *Geo.* 2. *c.* 20."

Sect. 4. " And the ſaid juſtices ſhall have power to " adminiſter an oath."

Sect. 5. " PROVIDED, That this act ſhall not ex- " tend to any tythes, oblations, payments, or obven- " tions, within the city of *London*, or liberties there- " of; nor to any other city or town-corporate where " the ſame are ſettled by act of parliament."

Sect. 6. " And no complaint ſhall be heard and " determined by the ſaid juſtices, unleſs the complaint " ſhall be made within *two years* next after the time " that the ſame tythes, oblations, obventions, and " compoſitions did become due."

Sect. 7. " PROVIDED ALSO, That any perſon " finding himſelf aggrieved by any judgment to be " given by ſuch two juſtices, may appeal to the next " general quarter-ſeſſions to be held for that county, " or other diviſion; and the juſtices there ſhall pro- " ceed finally to hear and determine the matter; and " to reverſe the ſaid judgment, if they ſhall ſee cauſe; " and if they ſhall find cauſe to confirm the ſaid judg- " ment, they ſhall decree the ſame by order of ſeſſions, " and ſhall alſo proceed to give ſuch coſts againſt " the appellant, to be levied by diſtreſs and ſale of the " goods and chattels of the ſaid appellant, as to them " ſhall ſeem juſt and reaſonable, and no proceedings " or judgment had by virtue of this act, ſhall be re- " moved or ſuperſeded by any *writ of certiorari*, or " other writ out of his Majeſty's courts of *Weſtminſter*, " or any other court, unleſs the title of ſuch tythes, " oblations, or obventions, ſhall be in queſtion."

Sect. 8. " PROVIDED, That where any perſon " complained of for ſubtracting or withholding any " ſmall tythes, or other duties aforeſaid, ſhall, before " the juſtices to whom ſuch complaint is made, inſiſt " upon any preſcription, compoſition, or *modus deci-* " *mandi*, agreement or title, whereby he ought to

" be

" be freed from payment of the ſaid tythes, or other " dues in queſtion, and deliver the ſame in writing " to the ſaid juſtices, ſubſcribed by him, and ſhall " then give to the party complaining reaſonable and " ſufficient ſecurity, to the ſatisfaction of the ſaid juſ- " tices, to pay all ſuch coſts and damages, as upon a " trial at law to be had for that purpoſe in any of his " Majeſty's courts, having cognizance of that matter, " ſhall be given againſt him, in caſe the ſaid preſcrip- " tion, compoſition, or *modus decimandi*, ſhall not, on " the ſaid trial, be allowed; in that caſe, the ſaid " juſtices ſhall forbear to give any judgment in the " matter; and then, and in ſuch caſe, the party " complaining ſhall be at liberty to proſecute ſuch " perſon for his ſaid ſubtraction in any other court, " where he might have ſued before the making of this " act."

Sect. 9. " And every perſon who ſhall, by virtue of " this act, obtain any judgment, or againſt whom any " judgment ſhall be obtained before any juſtices of the " peace out of ſeſſions for ſmall tythes, oblations, " obventions, or compoſitions, ſhall cauſe, or pro- " cure the ſaid judgment to be enrolled at the next " general quarter-ſeſſions, to be held for the ſaid " county, or other diviſion; and the clerk of the " peace ſhall, upon tender thereof, inroll the ſame; " and ſhall not receive for the inrolment of any one " judgment any fee or reward exceeding *one ſhilling*; " and the judgment ſo enrolled, and ſatisfaction made " by paying the ſum adjudged, ſhall be a good bar to " exclude the ſaid rectors, vicars, and other per- " ſons, from any other remedy for the ſaid ſmall " tythes, oblations, obventions, or compoſitions, for " which the ſaid judgment was obtained."

Sect. 10. " If any perſon, againſt whom ſuch judg- " ment ſhall be had, ſhall remove out of the county " or other diviſion, before the levying of the ſum " adjudged, the juſtices who made the judgment, or " one of them, ſhall certify the ſame, under hand " and ſeal, to any juſtice of ſuch other county or place " wherein the ſaid perſon ſhall be an inhabitant, who " ſhall, by warrant under his hand and ſeal, to be " directed

" directed to the conſtables or church-wardens of the " place, or one of them, levy the ſums ſo adjudged " to be levied upon the goods and chattels of ſuch " perſon, as fully as the ſaid other juſtice might have " done if he had not removed as aforeſaid."

Sect. 12. " And the juſtices, who ſhall hear and " determine any of the matters aforeſaid, ſhall have " power to give coſts, not exceeding ten ſhillings, to " to the party proſecuted, if they ſhall find the com- " plaint to be falſe and vexatious, to be levied in man- " ner and form aforeſaid."

Sect. 13. " And if any perſon ſhall be ſued for any " thing done in the execution of this act, and the " plaintiff in ſuch ſuit ſhall diſcontinue his action, or " be nonſuit, or a verdict paſs againſt him, ſuch per- " ſon ſhall recover double coſts."

Sect. 14. " PROVIDED, That any clerk, or other " perſon, who ſhall begin any ſuit for recovery of " ſmall tythes, oblations, or obventions, not exceed- " ing the value of forty ſhillings, in his Majeſty's " court of Exchequer, or in any the eccleſiaſtical " courts, ſhall have no benefit by this act for the ſame " matter for which he hath ſo ſued."

Complaint in writing.] *See ſect.* 1. *of the foregoing ſtatute.* ORDER for non-payment of ſmall tythes was quaſhed, becauſe ſaid only upon complaint generally; and the 7 & 8 *W.* 3. *c.* 6. requires the complaint to be in writing. *Vide Stran. p.* 264.

By ſtat. 7 & 8 *W.* 3. *c.* 34. " WHEREAS by rea- " ſon of a pretended ſcruple of conſcience, quakers do " refuſe to pay tythes and church-rates, it is enacted, " That where any quaker ſhall refuſe to pay or com- " pound for his great or ſmall tythes, or to pay any " church-rates, it ſhall be lawful for the two next " juſtices of the peace of the ſame county, (other than " ſuch juſtice as is patron of the church or chapel, " whence the ſaid tythes ſhall ariſe, or any ways in- " tereſted in the ſaid tythes) upon the complaint of " any parſon, vicar, farmer, or proprietor of tythes, Stat. 7 and 8 W. 3. cap. 34.

" church-warden or church-wardens, who ought to " have, receive, or collect the ſame, by warrant un- " der their hands and ſeals, to convene before them " ſuch quaker or quakers neglecting or refuſing to " pay or compound for the ſame, and to examine " upon oath (or affirmation, in caſe of the examina- " tion of a quaker) the truth and juſtice of the ſaid " complaint, and to aſcertain and ſtate what is due " and payable; and by order under their hands and " ſeals, to direct and appoint the payment thereof, ſo " as the ſum ordered do not exceed ten pounds; and " upon refuſal to pay according to ſuch orders, it " ſhall be lawful for any one of the ſaid juſtices, by " warrant under his hand and ſeal, to levy the ſame by " diſtreſs and ſale of the goods of ſuch offender, his " executors or adminiſtrators, rendering only the " overplus to him or them; the neceſſary charges of " diſtraining being thereout firſt deducted and allow- " ed by the ſaid juſtice. And any perſon finding " himſelf aggrieved by any judgment given by ſuch " two juſtices may appeal to the next general quarter- " ſeſſions to be held for the county, riding, city, li- " berty, or town-corporate; and the juſtices there " ſhall proceed finally to hear and determine the mat- " ter, and to reverſe the ſaid judgment, if they ſee " cauſe; and if they ſhall find cauſe to continue the " ſaid judgment, they ſhall then decree the ſame by " order of ſeſſions, and ſhall alſo proceed to give ſuch " coſts againſt the appellant, to be levied by diſtreſs " and ſale of the goods and chattels of the ſaid appel- " lant, as to them ſhall ſeem juſt and reaſonable; and " no proceedings or judgment had by virtue of this " act ſhall be removed or ſuperſeded by any *writ of* " *certiorari*, or other writ out of his Majeſty's courts " at *Weſtminſter*, or any other court whatſoever, un- " leſs the title of ſuch tythes ſhall be in queſtion."

Sect. 5. " PROVIDED, That in caſe any ſuch ap- " peal be made as aforeſaid, no warrant of diſtreſs " ſhall be granted until after ſuch appeal be deter- " mined."

Stat. 1 Geo. 1. ſtat. 2. cap. 6. ſect. 2.

By *ſtat.* 1 *Geo.* 1. *ſt.* 2. *c.* 6. *ſect* 2. the like remedy ſhall be had againſt any quaker or quakers, for the reco- very

very of any tythes or rates, or any cuſtomary or other rights, dues, or payments, belonging to any church or chapel, which of right by law and cuſtom ought to be paid, for the ſtipend or maintenance of any miniſter or curate officiating in church or chapel; and any two or more juſtices of the peace of the ſame county or place (other than ſuch juſtice as is patron of any ſuch church or chapel, or any ways intereſted in the ſaid tythes) upon complaint of any parſon, vicar, curate, farmer, or proprietor of ſuch tythes, or any church-warden or chapel-warden, or other perſon who ought to have, receive, or collect any ſuch tythes, rates, dues, or payments, as aforeſaid, are authorized and required to ſummon, in writing under their hands and ſeals, by reaſonable warning, ſuch quaker or quakers, againſt whom ſuch complaint ſhall be made; and after his or their appearance, or upon default of appearance, the ſaid warning or ſummons being proved before them upon oath, to proceed to hear and determine the ſaid complaint, and to make ſuch order therein as in the aforeſaid act is limited; and alſo to order ſuch coſts and charges as they ſhall think reaſonable, not exceeding *ten ſhillings*, as upon the merits of the cauſe ſhall appear juſt: which order ſhall and may be ſo executed, and on ſuch appeal may be reverſed or affirmed by the general quarter-ſeſſions, with ſuch coſts and remedy for the ſame; and ſhall not be removed into any other court unleſs the titles of ſuch tythes, dues, or payments ſhall be in queſtion; in like manner as by the aforeſaid act is limited and provided.

By *ſtat.* 27 *G.* 2. *c.* 20. which directs in what manner diſtreſſes ſhall be made by juſtices of the peace, and which gives to the juſtices power to order the goods diſtrained to be kept for a certain time before they be ſold, and gives power alſo to the officers making the diſtreſs to deduct their reaſonable charges, it is provided, that the ſame ſhall not extend to alter any proviſions relating to diſtreſſes to be made for the payment of tythes and church-rates by the people called quakers, contained in *ſtatutes* 7 & 8 *W.* 3. *c.* 34. and *ſtat.* 1 *Geo.* 1. *ſt.* 2. *c.* 6. Stat. 27 Geo. 2. c. 20.

Notwith-

Notwithſtanding all theſe ſtatutes, tythes (if of any conſiderable value) are now generally ſued for in the courts of equity by Engliſh bills, and for the moſt part in the *Exchequer*; but not upon the ſtatute for *treble* or *double* value; for there can be no ſuit in *equity* for the recovery of the *double* or *treble* value. *Vide Wood. b.* 2. *c.* 2. *Will.* 463.

If the incumbent dies, his executor may recover the tythes which became due in the teſtator's life-time; but he is not intitled to the *treble value* upon the ſtatute. *Vide* 1 *Vern. p.* 60.

Stat. 11 Geo. 2. cap. 19. ſect. 15.

By *ſtatute* 11 *Geo.* 2. *c.* 19. *ſect.* 15. "WHEREAS, "where a leſſor or landlord having only an eſtate for "life in the lands, tenements, or hereditaments, de- "miſed, happens to die before or on the day on which "any rent is reſerved or made payable, ſuch rent, or "any part thereof, is not by law recoverable by the "executors or adminiſtrators of ſuch leſſor or land- "lord; nor is the perſon in reverſion intitled thereto "any other than for the uſe and occupation of ſuch "lands, tenements, or hereditaments, from the death "of the tenant for life, of which advantage hath been "often taken by the under-tenants, who thereby avoid "paying any thing for the ſame: for remedy there- "of, it is enacted, that where any tenant for life "ſhall happen to die before or on the day on which "any rent was reſerved, or made payable, upon any "demiſe or leaſe of any lands, tenements, or heredi- "taments, which determined on the death of ſuch "tenant for life; the executors or adminiſtrators of "ſuch tenant for life ſhall and may, in an action on "the caſe recover of and from ſuch under-tenant of "ſuch lands, tenements, or hereditaments, if ſuch "tenant for life die on the day on which the ſame was "made payable, the whole, or if before ſuch day, "then a proportion of ſuch rent, according to the "time ſuch tenant for life lived, of the laſt year, or "quarter of a year, or other time in which the ſaid "rent was growing due as aforeſaid; making all juſt "allowances, or a proportionable part thereof reſpec- "tively."

By

By *ſtat.* 5 *Geo.* 3. *c.* 17. intitled, *An act to confirm all leaſes already made by Archbiſhops and Biſhops, and other eccleſiaſtical perſons, of tythes, and other incorporeal hereditaments, for one, two, or three lives, or twenty-one years; and to enable them to grant ſuch leaſes, and to bring actions of debt for recovery of rents reſerved and in arrear, on leaſes for life or lives.* Stat. 5 Geo. 3. cap. 17.

Sect. 1. "WHEREAS it may be doubtful whether "by the laws now in force, archbiſhops or biſhops, "maſters and fellows, or any other head and mem- "bers of colleges or halls, deans and chapters, pre- "centors, prebendaries, maſters and guardians of "hoſpitals, or any other perſon or perſons having any "ſpiritual or eccleſiaſtical promotions, heretofore had, "or now have, any power to make or grant any leaſe "or leaſes of tythes, or other incorporeal hereditа- "ments only, which lie in grant, and not in livery, "for one, two, or three lives, or for any term or "terms of years, not exceeding *twenty-one years*, "although the ancient rent, or yearly ſum, is thereby "mentioned to be reſerved; and all other requiſites "preſcribed by the acts of parliament now in being "to that end, or any of them, were or are juſtly and "truly obſerved and performed, by reaſon that there is "generally no place wherein a diſtreſs can be had or "taken for ſuch rent, or yearly ſum; and it may "be alſo doubtful, whether, in caſes of ſuch leaſes "for life or lives, there is any remedy in law for ſuch "eccleſiaſtical or other perſons, by action of debt or "otherwiſe, for recovering the rent or yearly ſum due "or arrear, which is mentioned to be reſerved on "ſuch leaſes for life or lives; therefore, for obviating "all doubts touching the ſame, and enabling the ſaid "archbiſhops and biſhops, maſter and fellows, or "other heads and members of colleges or halls, deans "and chapters, precentors, prebendaries, maſters and "guardians of hoſpitals, and other eccleſiaſtical per- "ſons, to make valid leaſes of ſuch their incorporeal "hereditaments, and to recover the rent or yearly "ſum mentioned to be reſerved on any leaſes by them "already granted or to be granted, for any one, two "or three lives, as aforeſaid; and alſo to make good

"and

" and effectual all ſuch leaſes as have already been " granted by them: be it therefore enacted, &c. that " all leaſes for one, two, or three life or lives, or any " term not exceeding twenty-one years, already made " and granted, or which ſhall at any time from and " after the paſſing this act be made or granted, of " any tythes, tolls, or other incorporeal heredita- " ments, by any archbiſhop or biſhop, maſter and " fellows, or other head and members of colleges or " halls, deans and chapters, precentors, prebendaries, " maſters and guardians of hoſpitals, and every other " perſon and perſons, who are enabled by the ſeve- " ral ſtatutes now in being, or any of them, to make " any leaſe or leaſes, for one, two or three life or " lives, or any term or number of years not exceed- " ing twenty-one, of any lands, tenements, or other " corporeal hereditaments, ſhall be, and are hereby " deemed and declared to be, as good and effectual " in law againſt ſuch archbiſhop, biſhop, maſter and " fellows, or other heads and members of colleges or " halls, deans and chapters, precentors, prebenda- " ries, maſters and guardians of hoſpitals, and other " perſons ſo granting the ſame, and their ſucceſſors " and every of them, to all intents and purpoſes, as " any leaſe or leaſes already made, or to be made, by " any ſuch archbiſhop or biſhop, maſter and fellows, " or other heads and members of colleges or halls, " deans and chapters, precentors, prebendaries, maſ- " ters and guardians of hoſpitals, and other perſons " having ſpiritual promotion, of any lands or other " corporeal hereditaments, now are, by virtue of the " ſtatute of the thirty-ſecond year of King Henry " the Eighth, or any other ſtatute now in being; any " law, cuſtom, or uſage to the contrary thereof in " any wiſe notwithſtanding."

Sect. 2. " PROVIDED ALWAYS, that nothing " herein contained ſhall extend, or be conſtrued to " extend, to enable any maſter and fellows, or other " heads and members of colleges or halls, deans and " chapters, precentors, prebendaries, maſters and " guardians of hoſpitals, or other eccleſiaſtical per- " ſons as aforeſaid, to grant leaſes for any longer

" or

" or other terms than by the local ſtatutes of their " ſeveral foundations they are now reſpectively enabled " to do."

Sect. 3. " And in caſe the rent or rents, yearly " ſum or ſums, reſerved or made payable in or by any " leaſe or leaſes already made, or to be made, by " any archbiſhop or biſhop, maſter and fellows, or " other head and members of colleges or halls, deans " and chapters, precentors, prebendaries, maſters and " guardians of hoſpitals, and every other perſon and " perſons ſo enabled to make leaſes as aforeſaid, for " one, two, or three life or lives, or years, in purſu- " ance of the ſeveral acts of parliament already in be- " ing, or by this preſent act, or any part thereof, " ſhall be behind or unpaid by the ſpace of *twenty-* " *eight days* next over or after any of the days whereon " the ſame, by ſuch leaſe or leaſes, now are, or here- " after ſhall or may be reſerved and made payable; " then, and ſo often, and from time to time, as it " ſhall ſo happen, it ſhall and may be lawful for ſuch " archbiſhop or biſhop, maſter and fellows, or other head " and members of colleges or halls, deans and chapters, " prebendaries, precentors, maſters and guardians of " hoſpitals, and other perſons ſo making or granting, " or having made or granted, ſuch leaſes as aforeſaid, " or their executors, adminiſtrators, and ſucceſſors " reſpectively, to bring an action or actions of debt " againſt the leſſee or leſſees, to whom any ſuch leaſe " or leaſes, for life or lives, or years, now are, or " hereafter ſhall be made and granted to his, her, or " their heirs, executors, adminiſtrators, or aſſigns, for " recovering the rent or rents which ſhall be then due " and in arrear, to any ſuch archbiſhop or biſhop, " maſters and fellows, or other heads and members of " colleges or halls, deans, chapters, precentors, pre- " bendaries, maſters and guardians of hoſpitals, and " other perſon or perſons before mentioned, his or " their executors, adminiſtrators, or ſucceſſors, in " ſuch and the ſame manner as fully and effectually " to all intents and purpoſes as any landlord or leſſor, " or other perſon or perſons could or might do for " recovering of arrears of rent due on any leaſe or " leaſes, for life or lives, or years, by the laws now

" in being, any law, ſtatute, uſage, or cuſtom to " the contrary notwithſtanding."

Sect. 4. " And this act ſhall be deemed and taken " to be a public act; and ſhall be judicially taken " notice of as ſuch in all courts of law and equity, " without ſpecially pleading the ſame."

CHAP.

CHAP. VII.

What leaſes parſons, vicars, and other eccleſiaſtical perſons may make of their glebe, tythes, farms, &c.

AT *common law*, no *biſhop*, *abbot*, *prior*, *dean*, *prebend*, or other *ſingle corporation*, could make any *alienation* or *leaſe* to bind their ſucceſſors, without the confirmation of their *chapter*, *covent*, &c. *Vide* 1 *Inſt.* 45. *a.*

The firſt ſtatute that made any alteration was *ſtatute of* 32 *H.* 8. commonly called the *Enabling Statute*; whereby *it is enacted*, Stat. 32 Hen. 8.

"That all leaſes then after to be made of a manor, lands, tenements, or hereditaments, by writing under hand and ſeal, for term of years, or for term of life, by any parſon or parſons of the full age of *twenty-one years*, having any eſtate of inheritance either in *fee-ſimple* or *fee-tail*, in their *own rights*, or in the *right* of their *churches*, &c. ſhall be good and effectual in the laws againſt the leſſors, their wives, heirs, and ſucceſſors."

"PROVIDED, That ſame ſhall not extend to any leaſe of any manors, &c. where any old leaſe ſhould be in being, unleſs the ſame expire, be ſurrendered or ended within *one year* after the making of ſuch new leaſe, nor ſhall extend to any grant to be made of any reverſion of any manors, &c. nor to any leaſe of any manors, &c. which have not moſt commonly been letten to farm, or occupied by the farmers thereof, by the ſpace of *twenty years* next before ſuch leaſe thereof made, nor to any leaſe to be made without impeachment of waſte, or to any leaſe to be made above the number of *three lives*, or *twenty-one years* at the moſt, from the day of the making thereof; and that upon the making of every ſuch leaſe there be reſerved yearly, during

" the ſaid leaſe, due and payable to the ſaid leſſors, " their heirs and ſucceſſors, to whom the reverſion " ſhall appertain, &c. ſo much yearly farm or rent, " or more, as hath moſt accuſtomably been yielded " and paid for the ſaid manors, &c. ſo to be letten with- " in *twenty years* next before the leaſe thereof made, " &c."

" This ſtatute not to extend to give any liberty or " power to any parſon, vicar, &c. to make any leaſe " or grant of any of their meſſuages, lands, tythes, " &c. or in any other manner than they ſhould or " might have had before the making ſame."

Note. *Before this ſtatute no archbiſhop, biſhop, archdeacon, dean or prebend, could have made any leaſe to have bound his ſucceſſors without the confirmation and conſent of their chapters, &c. as aforeſaid, but now they are enabled to make leaſes for their lives, or one-and-twenty years, without any confirmation at all with theſe qualifications,*

The requiſites to conſtitute an eccleſiaſtical leaſe under the ſtatutes.

1ſt. " Such leaſe muſt be made by writing indented, " and not by parol or deed poll."

2d. " It muſt be made to begin from the making, " or day of the making of ſuch leaſe."

3d. " If there be any old leaſe in being at the time " of the making of ſuch leaſe, it muſt expire, be ſur- " rendered or ended within a year after the making of " ſuch new leaſe, and ſuch ſurrender muſt be abſo- " lute, and not upon condition."

4th. " There muſt not be a double leaſe in being at " one and the ſame time; the one for years, and the " other for lives."

5th. " Such leaſe muſt be of lands manurable or " corporeal, which are neceſſary to be letten, and out " of which a rent may be reſerved, and not of things " that lie merely in grant, as fairs, markets, tythes, " tolls, franchiſes, advowſons, &c."

6th.

6th. "Such leaſe muſt be of lands, &c. which "have moſt commonly been letten to farm, or occu- "pied by the farmers thereof for the moſt part of "twenty years before the making of ſuch leaſe: ſo if "they have been to let for *eleven years* within twenty "years next before the making of the new leaſe, it "ſuffices: and a letting to farm by copy of court- "roll, is a ſufficient letting to farm within this ſtatute, "to enable the making of ſuch new leaſe."

7th. "There muſt be reſerved upon every ſuch "leaſe, and payable during the continuance thereof "to the leſſor, his ſucceſſors, &c. ſo much farm or "rent as hath moſt accuſtomably been yielded and "paid for the land ſo demiſed within twenty years "next before ſuch leaſe made: ſo that it ſufficeth, if "the yearly rent or farm be reſerved, though herriots "and other caſual ſervices be omitted; ſo if a greater "rent than formerly be reſerved, it ſufficeth: but if "the leſſor reſerve a leſs rent than the ancient during "his life, and after the full rent, yet it is naught, "becauſe it muſt be reſerved during the whole term: "ſo if lands uſually letten be demiſed with any other "lands, &c. though a rent be reſerved that exceeds "the value of thoſe lands and the old rent; yet ſuch "leaſe is not good againſt the ſucceſſor within this "law. But if the rent were formerly reſerved to be "paid at four ſeveral days, and by the new leaſe be "reſerved to be paid all at once, ſo the whole rent be "reſerved yearly, it is well enough."

If a Biſhop, &c. have two diſtinct manors, that have anciently been demiſed together, and one entire rent reſerved for both manors; and theſe being out of leaſe, the Biſhop, &c. may demiſe them ſeverally, reſerving ſeveral rents amounting to the whole ratably. Theſe have been *adjudged* in the *Common Pleas* to be good, and *affirmed* in *error* in the *King's Bench*; on this principle, that if a termor for life ſhould leaſe part for years, and then ſurrender and accept a new leaſe, rendering the *ancient* rent, it would be a good leaſe, *tamen quære:* for of that part leaſed by the termor, there would be two leaſes on foot together; but if the new leaſe were only of the lands not demiſed by

the termor, then it ſeems good. *Vide Keb.* 192—372, *&c.* 1 *Mod. p.* 203. 2 *Mod. p.* 57.

8th. " Laſtly; Such leaſe muſt not be without " impeachment of waſte; and therefore a leaſe to " one for life, remainder to another for life, remain- " der to a third for life, is not good againſt the ſuc- " ceſſor, tho' but for three lives, becauſe the remain- " ders make the preſent tenants diſpuniſhable for waſte " for the time."

Note. *Parſons and vicars being excepted in this enabling law, are left as they were at the common law; ſo that they could make no leaſe to bind the ſucceſſor without the confirmation of the biſhop and patron, till the ſtatute of* 13 *Eliz.*

A leaſe for *ninety-nine years*, if three lives live ſo long, is not good within this ſtatute. *Vide Co.* 8. 706.

Note. *This ſtatute conferred a new power upon ſingle corporations; but did not in any thing reſtrain their ancient power in making long leaſes and alienations of their very ſcites, demeſnes, &c. with confirmations, as aforeſaid, which being deemed a great prejudice to the church in general, a means of dilapidations, and a great hindrance of hoſpitality; therefore ſtat.* 1 *Elizabeth was made, which enacted,* " that all gifts, grants, feoffments, fines, and " other conveyances and eſtates, from the *firſt* day of " that preſent parliament, to be had, made, done, " or ſuffered, by any archbiſhop or biſhop of any " honours, caſtles, manors, lands, tenements, or other " hereditaments, being part of the poſſeſſions of his " archbiſhoprick or biſhoprick, or united, appertaining " or belonging to any the ſame archbiſhopricks or " biſhopricks, to any perſon or perſons, bodies poli- " tick or corporate, (other than the Queen's Ma- " jeſty, her heirs and ſucceſſors) whereby any eſtate " or eſtates ſhould or might paſs from the ſaid arch- " biſhops or biſhops, or any of them, other than for " the term of *twenty-one years*, or *three lives*, from any " ſuch time as any ſuch leaſe, grant, or aſſurance ſhall " begin, and whereupon the old accuſtomed yearly " rent

" rent or more ſhall be reſerved and payable yearly " during the ſaid term of *twenty-one years*, or *three* " *lives*, ſhall be utterly void and of none effect, to all " intents, conſtructions, and purpoſes; any law, " cuſtom, or uſage to the contrary thereof in any wiſe " notwithſtanding."

Note. *The exception, which gives, or rather reſerves the power to grant, &c. to the Queen, &c. was made void by a ſtatute made* 1 *Jac. cap.* 3.

That *though this ſtatute enacts, That all leaſes made in any other form ſhall be void and of none effect, to all intents and purpoſes*, yet it hath been adjudged, that it is only to be intended as againſt the ſucceſſors, and that leaſes made in other forms ſhall be good, notwithſtanding againſt the party himſelf that makes them, and may be affirmed by the ſucceſſor, by the receipt of the rent reſerved thereupon.

Note. *Firſt Elizabeth is a private act of parliament, that muſt in all caſes be pleaded, and cannot be given in evidence. Vide Co.* 4. 76—5—26 — *Cro. Eliz.* 874. *More*, 253.

Though this ſtatute do not reſtrain demiſing of any lands not formerly demiſed, yet it does it by implication: for the accuſtomable rent muſt be reſerved, and unleſs accuſtomably let, there cannot be an accuſtomable rent; and leaſes within this ſtatute muſt have all the reſtrictions in ſtatute 32 *H.* 8.

It muſt be of things manurable. *Vide Co.* 5. 3. *a.* out of which a rent may be reſerved. Of what things ſuch leaſes may be made.

On *ſtat.* 32 *Hen.* 8. & 1 *Eliz.* it has been held, that archbiſhops and biſhops may, with confirmation of the dean and chapter, make concurrent leaſes, that is, notwithſtanding there be a leaſe in being for *twenty-one years*, they may make a new leaſe of the ſame lands to another for *twenty-one years* from the making thereof; and this being confirmed as aforeſaid, ſhall bind the ſucceſſor, the other things being obſerved in it. *Vide* 1 *Inſt.* 45. 8. *More* 66. 1 *Inſt.* 45. *a.* Concurrent leaſes.

Sir *Edward Coke* is of opinion, that like *concurrent leaſes* may be made by *deans*, *prebends*, &c. with confirmation: though ſome learned men are not ſatisfied concerning *concurrent leaſes*, becauſe by theſe *concurrent leaſes* the ſucceſſor loſes his remedy for his rent by diſtreſs during the former term, and the tenant may be inſolvent as to an action of debt. A *concurrent leaſe* for *lives* is not good, becauſe upon ſuch leaſe the leſſor would have no remedy for his rent. *Vide* 1 *Inſt.* 45. *a. More*, 253. *Cro. Eliz.* 141.

The reſtrictive ſtatute againſt leaſes of deans, prebends, &c.

The next reſtrictive ſtatute is 13 *Elizabeth*, whereby it is enacted, "That from thenceforth all *leaſes*, *gifts*, "*grants*, *feoffments*, *conveyances*, or *eſtates*, to be "made, had, done, or ſuffered by the *maſters* and *fellows* of any *college*, *dean and chapter* of any cathedral "or collegiate church, *maſter or guardian* of any *hoſpital*, *parſon*, *vicar*, or any other having a *ſpiritual* "or *eccleſiaſtical* living, or any houſes, lands, tythes, "tenements, or other hereditaments, being any part "of the poſſeſſions of any ſuch college, &c. or anywiſe appertaining or belonging to the ſame, or any "of them, to any perſon or perſons, bodies, &c. "(other than for the term of *twenty-one years*, or *three* "*lives*, from the time as any ſuch leaſe or grant ſhall "be made or granted, whereupon the accuſtomed "yearly rent or more ſhall be reſerved and payable "during the ſaid term) ſhall be utterly void, &c."

The penning of this ſtatute, and 1 *Eliz.* being in effect the ſame in ſubſtance, the conſtruction is the ſame; though in this there was no ſaving of grants to the King, and therefore being for the public good, had reſtrained other grants to him not warranted by this, though ſtat. 1 *Jac. cap.* 3. had never been made. *Vide Co.* 5. 146.

Parſons and vicars reſtrained by this ſtatute.

Note. "*Parſons and vicars had not their power any* "*wiſe enlarged by ſtatute* 32 *H.* 8. they had no reſtric"tion on them till this ſtatute; but from henceforth "they are reſtrained from making any leaſe or grants, "other than for *twenty-one years*, or *three lives*, with "the qualifications in the above ſtatutes, and ſuch leaſes

" leaſes muſt be confirmed by the *patron* and *ordi-*
" *nary*, becauſe *excepted* in the Enabling Stutute of 32
" *Hen.* 8."

After making of this *ſtatute*, heads of colleges, deans, prebends, &c. might have made concurrent leaſes, as well as biſhops might: there is a *proviſo* in *ſtatute of* 18 *Eliz.*

No concurrent leaſe but within three years before the former ends.

That all leaſes then after to be made by any the aforeſaid eccleſiaſtical, ſpiritual or collegiate perſons, or others, of any of their eccleſiaſtical, &c. lands, &c. whereof any former leaſe for years is in being, and not expired, ſurrendered or ended within *three years* next after the making of any ſuch new leaſe, ſhould be utterly void, fruſtrate, and of none effect, any law, &c.

Biſhops not included in this ſtatute.

Note. " Biſhops are conceived not to be compre-
" hended within this proviſo; for though the words
" are general enough, yet the particulars mentioned
" before the general words being of an inferior rank,
" the general words cannot draw in the more worthy."

Bonds and covenants contrary to theſe ſtatutes are void.

By proviſion in ſtatute of 18 *Eliz.* all bonds and covenants then after made for the making or renewing any leaſe contrary to the intent of that ſtatute, or *ſtatute of* 13 *Eliz. c.* 10. ſhould be utterly void.

Leaſes of parſons to be void by non-reſidence.

By *ſtat.* 13 *Eliz. it is enacted*, " That no leaſe
" made after the *fifteenth day* of *May* following, of
" any *benefice* or *eccleſiaſtical promotion*, with cure of
" any part thereof, and not being impropriated, ſhould
" endure any longer than while the leſſor ſhould be
" ordinarily reſident and ſerving the cure of ſuch be-
" nefice, without abſence above *fourſcore days* in any
" *one year*; but that every ſuch leaſe (*ſo ſoon as it, or*
" *any part thereof, ſhould come to any poſſeſſion above for-*
" *bidden, or*) immediately upon ſuch abſence, ſhall
" ceaſe and be void, and the incumbent ſo offending
" ſhall, &c. loſe *one year's* profit of his ſaid benefice,
" to be diſtributed by the ordinary to the poor of the
" pariſh."

Note. The words in *italics* are repealed by ſtat. 14 Eliz. cap. 11.

Charges on parſonages makes the grant of ſame void.

By ſame *ſtatute*, "All charging of ſuch bene-"fices, with cure then after, with any penſion, or "with any profit out of the ſame, to be yielded or "taken, other than rents reſerved upon leaſes, ſhould "be void."

In what caſe a parſon may demiſe, notwithſtanding his non-reſidence.

Where any parſon ſhould be qualified to have *two livings*, he may demiſe the one of them, where he is not ordinarily reſident, to his curate only, that ſhall there ſerve the cure. But ſuch leaſe ſhall endure no longer than during ſuch curate's reſidence without abſence above *forty days* in any *one year*.

Leaſes, bonds, and covenants, to be void.

By *ſtat.* 4 *Elizabeth*, all leaſes, bonds, promiſes, and covenants, of and concerning benefices and eccleſiaſtical livings, with cure to be made by any curate, ſhall be of no other, or better force, validity, or continuance, than if the ſame had been made by the beneficed perſon himſelf, that ſhall demiſe the ſame to ſuch curate.

Houſes in corporations, &c. how to be leaſes.

By *ſame ſtatute it is enacted*, That the *reſtrictive ſtatute* 13 *Eliz. c.* 10. ſhall not extend to any *grant*, *aſſurance*, or *leaſe of any houſes* belonging to any the perſons, &c. in *ſtat.* 13 *Eliz.* nor to any *grounds* to any ſuch *houſes* appertaining, &c. in any *city*, *borough*, *town-corporate*, or *market-town*, or the *ſuburbs* of any of them; but that all ſuch houſes and grounds may be granted, demiſed, and aſſured, as they might have been before the making of the ſame, ſo always as ſuch houſe be not the *capital*, or *dwelling-houſe* uſed for the habitation of the parſons, &c. nor have above *ten acres* of the ſame.

Not to leaſe in reverſion.

That no leaſe be made by virtue of this act in reverſion, nor without reſerving the accuſtomed yearly rent at leaſt, nor for a longer term than forty years at moſt, charging the leſſee with repairs, and no alienation in fee, unleſs lands of as good yearly value be ſettled, &c. in lieu thereof.

Bonds, contracts, covenants, promiſes, in what caſe void.

By a proviſo in this ſtatute, all *bonds*, *contracts*, *promiſes*, and *covenants*, to be made for the ſuffering or permitting any perſon to enjoy any *benefice* or *eccleſiaſtical* promotion

promotion with cure, or to take the profits or fruits thereof, other than ſuch *bonds* and *covenants* as ſhall be made for aſſurance of any leaſe heretofore made, ſhall be of no other force than leaſes made by the ſame perſon.

Offences againſt this ſtatute to be made to the ordinary.

By *ſtat.* 18 *El. c.* 11. *it is enacted*, That after complaint made to the ordinary, and ſentence given upon any offence committed by the incumbent againſt *ſtatute of* 13 *Eliz. c.* 20. whereby he ſhall or ought to loſe a year's profit of his benefice, &c. then the ordinary within *two months* after ſuch ſentence and requeſt made by the churchwardens of the pariſh, where, &c. or one of them, ſhall grant the ſequeſtration of ſuch profits to ſuch inhabitant or inhabitants within the ſame pariſh, &c. as to him ſhall ſeem meet, &c.

Any pariſhioner may avail himſelf of a breach of this ſtatute.

On default of the ordinary, it ſhall be lawful for every pariſhioner, &c. to retain, &c. his tythes, and for the churchwardens to enter upon the glebe-land, rents, and duties of every ſuch benefice to be employed to the uſe of the poor, &c. until ſuch time as ſequeſtration ſhall be committed by the ordinary; and then the churchwardens and pariſhioners to account to ſuch to whom the ſequeſtration ſhall be committed, who is to employ the whole profits according to the act, upon pain to forfeit the double value of the profits withholden, to be recovered in the eccleſiaſtical court by the poor of the pariſh.

On theſe reſtrictive ſtatutes, two obſervations ariſe, viz. *Firſt*; That they do not by any conſtruction enable any perſons to make ſuch leaſes as they were by *common law* diſabled to make. A parſon or vicar, though he is reſtrained from making longer leaſes than for *twenty-one years*, or *three lives*, even with the conſent of patron and ordinary, yet is not enabled to make any leaſe at all, ſo as to bind his ſucceſſors without obtaining ſuch conſent; *Secondly*; That though leaſes contrary to theſe acts are declared void, yet they are good againſt the leſſor during his life, if he be a ſole corporation, and are alſo good againſt an *aggregate* corporation, ſo long as the head of it lives, who is preſumed to be the moſt concerned in intereſt. For theſe

ſtatutes

ſtatutes were intended for the benefit of the ſucceſſor *only*; and no man ſhall make an advantage of his own wrong. *Vide Co. Litt. p.* 44 & 45.

Note. " By the foregoing ſtatutes it appears, that " *archbiſhops* and *biſhops* may make leaſes for *twenty-one* " *years*, or for *one*, *two*, or *three lives*, with the quali- " fications before mentioned, without any confirma- " tions at all: and they may make concurrent leaſes " for *twenty-one years*, upon leaſes for *twenty-one years* " from the making, with confirmation of the dean and " chapter, with ſuch qualifications as is aforeſaid, " though there be above three years in being of the " old leaſe at the time of the making the new; and " where the biſhop has two chapters, there the con- " current leaſe muſt be confirmed by both chapters.

If a biſhop had two chapters, and one of them ſurrenders, is ſuſpended or diſſolved, the confirmation of the other ſuffices.

There is a caſe in Mr. Juſtice Harpur's Reports, where the caſe is put, that a biſhop made a leaſe, dated 2 *die Maii*, confirmed the third day, and ſealed the fourth day of *May*, and held a good leaſe, and well confirmed.

A confirmation by the dean and chapter after the death of the biſhop, comes too late; ſo held by *Catlyne*, *Suthcoate*, and *Windham*, againſt *Wray*.

If a biſhop make ſeveral concurrent leaſes, and the latter is firſt confirmed, and after the firſt is confirmed; in this caſe, the firſt leaſe ſhall be preferred, becauſe nothing paſſes by the confirmation in point of intereſt but a mere conſent.

If a biſhop make a grant to the King, which is confirmed by the dean and chapter before the grant is inrolled, this is well enough.

Note. " A biſhop cannot make a concurrent leaſe " for life, though upon a precedent leaſe for years, nor " a con-

" concurrent leaſe for years, where there is a leaſe for " life in being."

Deans, prebendaries, heads of colleges, maſters of hoſpitals, and other eccleſiaſtical perſons mentioned in *ſtatute* 13 *Eliz. c.* 10. may make leaſes for *twenty-one years*, or any leſſer number of years, or for one, two, or three lives in poſſeſſion, according to the qualifications above-mentioned; and they may make concurrent leaſes as biſhops may with confirmations; but they muſt be within three years of the determination of the former term by expiration, ſurrender, or otherwiſe: ſo that in this point the biſhop has the advantage.

The enabling *ſtatute of* 32 *H.* 8. gives power to make leaſes, to hold from the making, or day of the making; yet the reſtrictive *ſtatute of* 13 *Eliz.* makes them void, if they be not made to hold from the making, and not from the day of the making; but the leaſes of biſhops and archbiſhops are not within that act.

Note. All leaſes ſhould be void, other than for *twenty-one years* or *three lives* from the time of the commencement.

All concurrent leaſes of any biſhop, dean, prebend, and archdeacon, are to be confirmed; the leaſes of biſhops and archbiſhops are to be confirmed by the dean and chapter, or deans and chapters, if there be ſeveral chapters.

Grants made by a prebend are to be confirmed by the biſhop, dean and chapter.

Grants made by deans are to be confirmed by the biſhop and chapter.

Grants made by the archdeacon, by the biſhop, dean and chapter.

Grants of parſons and vicars, with their patrons and ordinaries.

Grants

Grants by the incumbent of a donative, by the patron alone.

If a parſon makes a leaſe, which is confirmed by the biſhop *only*, who is patron, without the dean and chapter, which ought to have joined, it ſhall bind the ſucceſſor during the lives of the biſhop and incumbent, although the biſhop be tranſlated.

Grants by parſons, vicars, prebends, &c. before induction or inſtallation, &c. although confirmed, are not binding to the ſucceſſor.

If the King be patron of a prebendary, then the King and dean and chapter, and not the biſhop, ought to confirm the grant.

A leaſe made by a prebend, parſon, vicar, &c. may be confirmed for part of the term, if it be for years, that is, confirm the land to the leſſee for ſo many years of the term; but if the term be confirmed for part of the term, it were abſurd and repugnant, and ſhould be good for the whole term: and as ſuch leaſe may be confirmed for part of the term, ſo it may be for part of the land.

If a parſon, &c. make a grant, which is confirmed by the patron and ordinary, and after be deprived, yet the grant is good.

A huſband ſeiſed in the right of his wife of an advowſon, the parſon makes a leaſe warranted by the ſtatutes before-mentioned, and the biſhop and huſband confirm it; this ſhall not bind the right of the wife but during the huſband's life, but that the ſucceſſor after his death will avoid it, that comes in by the preſentation of the wife.

If a tenant *in tail*, being patron, confirm the grant of the parſon with the biſhop, this ſhall not bind the incumbent of the iſſue in tail.

If an uſurper preſent, and confirm the leaſe of his incumbent with the biſhop, and after is removed by

writ of *quare impedit*, &c. this ſhall not bind the clerk of the true patron.

If the true patron grant the next avoidance, and then confirm the grant of the parſon, who after dies, the incumbent preſented by him that had the next avoidance ſhall avoid the leaſe, and his very entry upon the leſſee avoids the leaſe for ever.

If the parſon makes a leaſe to the patron, which is confirmed by the biſhop, this is not good; but if the patron grants it over, it amounts to a confirmation.

If a prebend, parſon or vicar, make a leaſe, and the biſhop, being patron, confirms it without the dean and chapter, yet this ſhall bind the biſhop and all the prebends, parſons, &c. which he ſhall collate.

If a parſon had made a leaſe for above *twenty-one years* before *ſtatutes* 13 & 14 *Eliz.* which had been confirmed after; this had been good, and not within the reſtriction of thoſe laws.

If a parſon leaſes where there are two patrons, both ought to confirm.

If the patron and a ſucceeding biſhop confirm the leaſe of the parſon, it is good enough.

A prebend made a leaſe, reciting that it was with the conſent of the biſhop, who ſigned and ſealed the leaſe to the leſſee, but was no party to the deed.—Note. *This grant has been doubted.*

As to leaſes, a parſon or vicar may make at this day, under all the before-mentioned ſtatutes.

That at and by the *common law*, a parſon or vicar might have granted or charged his glebe in fee-ſimple, with the confirmation of the patron and biſhop; but being excepted out of the enabling *ſtatute* 32 *H.* 8. he could never make any leaſe or grant to bind their ſucceſſors without ſuch confirmation; then by *ſtatute* 13 *Elizabeth*, parſons and vicars are reſtrained: ſo that they

they cannot grant but for *eleven years*, or *three lives* from the making of ſuch leaſe, and not from the day of the making, as is before obſerved; and theſe leaſes and grants muſt be with the confirmation of the patron and ordinary, with all the qualifications expreſſed in the beginning of this chapter.

They may make concurrent leaſes, as deans, prebends, &c. may do within *three years* of the end of the former leaſes.

It has been a queſtion, Whether a parſon or vicar at this day can make any leaſe at all to bind his ſucceſſor?

For by *ſtatute* 13 *Eliz. cap.* 20. *it is enacted*, That leaſes of parſons, vicars, &c. that have cure of ſouls, ſhall endure no longer than they ſhall be ordinarily reſident, and ſerve the cure; and that if ſuch parſon, &c. ſhall be abſent from their cure above *eighty days* in *one year*, that then ſuch leaſe ſhall ceaſe, and be void.

When a parſon dies, and *eighty days* incur, and this being a law for the advancement of religion and hoſpitality, to avoid dilapidations, it ſhall have an equitable conſtruction for the preferring theſe ends: therefore ſome have held, that the death of the parſon, vicar, &c. after *eighty days* have incurred from their deaths, ſhall make all their leaſes and grants void, though never ſo ſufficiently confirmed; and rely very much upon the preamble of the ſtatute, which begins, "That the "livings appointed for *eccleſiaſtical* miniſters may not "by corrupt and indirect dealings be transferred to "other uſes: be it enacted, &c. but by theſe leaſes it "is apparent the profits are converted to other uſes, "&c."

Others have held the contrary opinion, becauſe ſuch abſence is not voluntary, but by the act of God, and regularly theſe cannot be ſaid abſent that are not in *eſſe*.

Crook reports in Mott and Hale's caſe, adjudged in point, that their leaſes are void by death; yet *More* reporting the ſame caſe, ſays, "As to the matter in "law

" law, the judges were divided, two againſt two, and " that the judgment was given upon a miſrecital of " the ſtatute."

There is a *quære* in *Dyer*, whether ſuch leaſes ſhall be void upon *eighty days* abſence *ab initio*, or but from the time of abſence by *eighty days*; but it ſeems to me with ſome clearneſs, that it ſhall only be void from *eighty days* abſence, and not *ab initio*.

For firſt; The words of the ſtatute are, " That " ſuch leaſe ſhall endure no longer than the leſſor ſhall " be ordinarily reſident, &c." ſo that till then it is to endure; and the ſtatute cloſes, " That upon ſuch " abſence the term ſhall ceaſe," which it could not do if it had not a being before; for a thing cannot ceaſe to be that has not been.

Another *quære* may be ſtarted in this caſe upon the reaſon in the *Lincoln College caſe*, whether ſuch leaſe ſhall be void againſt the preſent incumbent that made it, or only againſt his ſucceſſors.

It ſeems that the intent of the makers of this act was, to make ſuch leaſe void againſt the leſſor himſelf upon ſuch abſence: for, as before is ſaid, the ſtatute ſays, " it ſhall indure no longer," which is a term of limitation, and that immediately upon ſuch abſence the leaſe ſhall ceaſe, and be void; and it cannot ceaſe immediately upon the abſence, and yet be good during the life of the incumbent.

In the caſe of *Ruel verſus Hart, ſtat.* 43 *Eliz. B. R.* the court held the contrary.

If any parſon, vicar, &c. be ſuſpended, inhibited, or diſabled to ſerve the cure by the ſpace of *eighty days* in a year, this ſhall not make ſuch leaſe void, for the not ſerving the cure muſt be voluntary.

It hath been held, that if a parſon be reſident, and do not ſerve the cure, or ſerve the cure and be abſent by *eighty days*, that in both theſe caſes it will make ſuch leaſe void.

Though this ſtatute on *eighty days* abſence makes ſuch leaſe void made by parſons and vicars, and ſays nothing of confirmation; yet a confirmation of the patron and ordinary in this caſe ſeem not to amend the matter; for if the leaſe be void, the confirmation is of no avail.

At the *common law*, if a parſon, vicar, &c. had made a leaſe and reſigned, the next incumbent might have entered immediately upon the leſſee.

Stat. 28 H. 8. By a ſtatute made in 28 *Hen.* 8. the leſſee may hold on his term for *ſix years*, if the parſon that made his leaſe ſo long live, and the term were made for ſo long time; but upon ſuch leaſe there muſt be ſo much rent reſerved within *forty ſhillings* as ſuch benefice is valued at in the *King's books*. *See the ſtatute at large.*

By ſame ſtatute, if a parſon make a leaſe, and reſign, and dies, the tenant ſhall hold out his leaſe for the year that was commenced at the time of his death, if the term were to have had ſo long continuance, if the parſon had not died.

This ſeems only of ſuch lands as are ploughed; for the ſucceeding parſon is to have the parſonage-houſe and glebe, which is not ſowed within a month after he is inducted, allowing a reaſonable deduction for the rent reſerved upon ſuch leaſe.

In both caſes the leſſee muſt pay the reſerved rent to the ſucceeding incumbent, who is enabled to ſue or diſtrain for the ſame.

And ſuch leaſe muſt be in writing under hand and ſeal, and not by parol.

Note. *Statute* 13 *Eliz. has made this law of none effect.*

As to *bonds, covenants, promiſes, &c. are void within the ſtatute of* 18 *Eliz.*

Covenants,

Covenants, bonds, &c. made for the enjoying houſes within cities, corporations, &c. are not void within this law; for this law makes no bonds, covenants, &c. void, which are not againſt the intent of this ſtatute and the ſtatute 13 *Eliz. cap.* 10. but leaſes of houſes and lands in cities, &c. by *ſtatute* 14 *Eliz. cap.* 11. are exempted out of 13 *Eliz. cap.* 10. and are not within *ſtatute* 18 *Eliz.*

A parſon made a bond to reſign upon requeſt, and afterwards a leaſe to his patron of part of the glebe for *twenty-one years*. In an action brought upon this bond, the incumbent pleaded the *ſtatute* 18 *Eliz.* and averred, that this bond was made to ſecure this leaſe, and to compel the incumbent to reſide, and adjudged a good plea, and an apt averment.

A parſon made a leaſe, and in the leaſe covenanted not to be abſent by the ſpace of *eighty days* in any one year, and gave bond for the performance, and after became non-reſident for *eighty days*; and reſolved, that the bonds and covenants were both void.

A parſon made a leaſe, and covenanted neither to do or ſuffer to be done, any matter, whereby the leaſe ſhould become void, and after became non-reſident by the ſpace of *eighty-days* in a year, and this was held a good covenant; and a covenant, that the parſon ſhould be reſident, was held not to be againſt this law, by *Popham*, *Tanfield*, and *Clench*, againſt *Williams*.

As to leaſes of colleges and hoſpitals,

It is to be obſerved, that they are not comprehended in the enabling *ſtat.* 32 *H.* 8. nor in any other ſtatute, till the reſtrictive *ſtat.* 13 *El.* whereby (amongſt the reſt) the maſters and fellows of colleges, and the maſters and guardians of hoſpitals, are diſabled to make any grants or conveyances of any of their poſſeſſions, other than for *twenty-one years*, or *three lives*, from the making of ſuch leaſe, and not from the day of the date, or from the date, as has been ſaid: and this muſt be of lands uſually demiſed, and the accuſtomed rent, or more, muſt be reſerved, with all the other qualifications mentioned before.

Stat. 18 Eliz. There is a reſtriction upon colleges by the *ſtatute* 18 *Eliz.* that upon all college leaſes, a third part of the ancient rent ſhall be reſerved in wheat and malt, after the rate of *ſix ſhillings and eight-pence* a quarter wheat, and *five ſhillings* a quarter malt, to be delivered at the colleges; andin default of the delivery, to pay for the wheat and barley, after the rate the beſt wheat and malt ſhall be ſold the next market-day, before the rent ſhould have been paid; and for default of ſuch reſervation, the leaſe to be void; and the markets that are to ſet the prices are, *Oxford* for *Oxford*, *Cambridge* for *Cambridge*, *Windſor* for *Eaton*, *Wincheſter* for *Wincheſter*.

By *ſtatute* 18 *Eliz.* they are reſtrained to make any concurrent leaſes till within *three years* of the end of the former terms that are in being.

As to what things are demiſable within theſe ſeveral ſtatutes, and what reſervations are good, and in what caſe the acceptance of rent by the ſucceſſor will make a leaſe good, that was voidable within theſe laws, and the ſeveral qualifications mentioned before.

One *Small* being poſſeſſed of the *manor of Padington*, by a leaſe from a biſhop of a term of years; the biſhop made a leaſe to another for three lives, and before livery the tenant ſurrendered his former term; and it was held, that the ſurrender was made in due time, and the ſecond leaſe good.

A prebend made a new leaſe without excepting the crab-trees, as was done in the former leaſe, reſerving the ancient rent, with other due circumſtances; and this leaſe was held void againſt the ſucceſſor, by reaſon of the adding of the crab-trees.

It hath been adjudged, that a biſhop, dean, &c. cannot grant the next avoidance of an advowſon, nor any rent-charge out of the poſſeſſions of the church; but the ſame is void within the reſtrictive acts before mentioned, though theſe cannot be ſaid to be any of the poſſeſſions of their churches.

It

It hath been held, that where a biſhop demiſed a rectory for lives, and covenanted to diſcharge, ſave harmleſs, and indemnify, the leſſee, &c. from all penſions, procurations, ſubſidies, and from all other payments of any ſum of money, demands and duties whatſoever, ordinary or extraordinary, which ſhall be due and iſſuing out of the premiſes; that this covenant would not bind the ſucceſſor, unleſs it had been in the ancient leaſes.

Hale, Chief Juſtice, was of opinion, that ſuch covenant, though it had been in former leaſes, ſhould not bind the ſucceſſor for the royal aid, or any new charge by act of parliament.

A biſhop may grant an ancient office, with the ancient fee, (if it be a neceſſary office, for the life of the officer;) but the biſhops cannot grant ſuch office to two, or in reverſion.

A biſhop cannot grant an annuity *pro conſilio impenſo et impendendo*, to bind his ſucceſſor, though it be confirmed by the dean and chapter.

It hath been reſolved, that a biſhop of late erection may grant an office of neceſſity to one in poſſeſſion for life, with a reaſonable fee.

Note. *Theſe grants muſt be all confirmed by the dean and chapter, becauſe they are not good within the ſtatute* 32 *Hen.* 8.

Where offices have anciently been granted in reverſion, they may ſtill be granted in reverſion, with confirmation.

If a biſhop grant an ancient office with the ancient fee and more, and the grant be entire, (as where the ancient fee was *five marks*, and the new *five pounds*) it is void for all. But if it be ſeveral, (as *five marks*, and paſturage for *two horſes*) it is good for the ancient fee, and void for the other, *per Hutton and Yelverton, verſus Crook and Harvey.*

If a copyhold eſcheator be forfeited, the biſhop may grant it in fee by copy of court-roll, notwithſtanding *ſtatute* 1 *Eliz.*

It was alſo reſolved, that where an archdeacon made a leaſe for three lives, warranted by the ſtatutes before-mentioned, and the leſſee granted a rent-charge for an *hundred years*, which was confirmed by the biſhop, dean and chapter; that notwithſtanding the ſame was void againſt the ſucceſſor within *ſtatute* 13 *Eliz. cap.* 10.

If a *writ of annuity* ſhould be brought againſt a parſon, &c. pretending the ſame due by preſcription; and although the parſon pray in aid of the patron and ordinary, and upon a plea pleaded by them, the plaintiff obtains verdict and judgment, and all this by practice and fraud to charge the glebe, it is void againſt the ſucceſſor: for theſe ſtatutes being made for the benefit of the church, the advancement of religion and hoſpitality, and to avoid dilapidations, ſhall always have a favourable conſtruction.

It is regularly true, that where the wife, iſſue in tail, or ſucceſſor, accepts the rent after the death of the huſband, tenant in tail, or predeceſſor, upon a void leaſe made by the huſband, tenant in tail, or predeceſſor, that ſuch acceptance will not affirm the leaſe.

This rule muſt be underſtood of ſuch a leaſe as is void *ipſo facto*, without entry, or any other ceremony; and therefore if a parſon, vicar, or prebend, &c. make a leaſe not warrantable by the ſtatutes for *twenty-one years*, rendering rent, and dies, here no acceptance of rent by the ſucceſſor, &c. will affirm this leaſe, becauſe the ſame was void without entry, or other ceremony.

If a parſon, vicar, or prebend, make a leaſe not warrantable within the before-mentioned ſtatutes, for life or lives, reſerving rent, and die, and the ſucceſſor before entry accept the rent, this leaſe ſhall bind him for the time. For this being an eſtate of freehold, could not be void entry.

If a biſhop, abbot, or prior, which have the inheritance in fee-ſimple in them, make a leaſe for lives or years, not warranted by the ſtatutes before-mentioned, not being abſolutely void by their deaths, but only voidable by the entry of the ſucceſſor, if the ſucceſſor accept the rent before entry, be it for lives or years, he affirms the leaſe for his life.

If a biſhop make a leaſe not warranted by the ſtatutes, rendering rent, and die, and his ſucceſſor appoints his bailiff to collect his rents of that manor, who, amongſt the reſt, receives the rent reſerved upon this demiſe, and accounts to the biſhop's ſucceſſor for it, this is a good acceptance, and ſhall bind the biſhop for his time.

If a parſon leaſe for life, not warranted nor confirmed, reſerving rent, if his ſucceſſor receive fealty of his tenant upon this leaſe, he has thereby affirmed the leaſe for his time: the like it will be if the ſucceſſor bring an action of waſte.

If a biſhop make a leaſe of tythes, or other things not manurable for life or lives, rendering rent, and dies, and his ſucceſſor accepts this rent, it will not affirm the leaſe.

Whether ſuch acceptance upon a leaſe for years of tythes, &c. will bind the ſucceſſor, ſeems yet a quære.

As to what leaſes or farms may or may not be taken.

By *ſtatute* 21 *Hen.* 8. it is, amongſt other things, enacted, "That no ſpiritual perſon ſhall in his own "name, or in the name of any other, take to farm any "manors, lands, tenements, or hereditaments, upon "the penalty of ten pounds for every month that he "holds the ſame; nor by himſelf, nor any other, "ſhall buy cattle, corn, lead, tin, hides, leather, tallow, fiſh, wool, wood, or any manner of victuals "or merchandizes, to ſell again for gain, upon pain "to forfeit the treble value of things ſo bought." Stat. 21. H. 8.

A ſpiritual perſon may buy ſuch things for his own uſe, and if they do not fit him, he may ſell the ſame again; and ſo where he hath not ſufficient glebe, he may take grounds for the maintenance of his family.

It is further enacted by the ſame ſtatute, "That no "*ſpiritual* perſon beneficed with cure of ſouls ſhall "farm the parſonage or vicarage of another to take "any rent or profit out of ſuch farm, upon the penalty "of *forty ſhillings* a week, and *ten times* the value of "the rent, or profit he ſhall take out of his farm."

It is further enacted by the ſame ſtatute, "That no "*ſpiritual* perſon ſhall have or keep by himſelf, or "any other, any tan-houſe or brew-houſe, other than "for his own family, upon pain to forfeit *ten pounds* "*per menſem.*"

All which penalties are given to the king and informer, to be recovered in any of his majeſty's courts of record at *Weſtminſter*, by action of debt, bill, plaint, or information, wherein no eſſoin, protection, or wager of law is to be admitted, &c.

Stat. 5 Geo. 3. cap. 17.

By *ſtatute* 5 *Geo.* 3. *cap.* 17. a leaſe of tythes or other incorporeal hereditaments alone may be granted by any biſhop, or any ſuch *eccleſiaſtical* or *eleemoſynary* corporation, and the ſucceſſor ſhall be entitled to recover the rent by an action of *debt*, which (in caſe of a freehold leaſe) he would not have brought at the *common law*.

CHAP.

CHAP. VIII.

The manner of paying tythes, together with the ſums payable by the reſpective pariſhes in London.

BY the ſeveral acts of the 27 *H.* 8. *c.* 20. 32 *H.* 8. *c.* 7. 2 & 3. *Edw.* 6. *c.* 13. and 7 & 8 *W.* *c.* 6. it is provided, that nothing therein ſhall extend to the city of *London* concerning any tythe, offering, or other *eccleſiaſtical* duty grown and due to be paid within the ſaid city; becauſe there is another order made for the payment of tythes and other duties there; which order is thus ſet forth: It appears by the records of the city of *London*, that *Niger* Biſhop of *London* in 13 *Hen.* 3. made a conſtitution in confirmation of an ancient cuſtom formerly uſed time out of mind, that proviſions ſhould be made for the miniſters of *London* in this manner, that is to ſay, that he who paid the rent of *twenty ſhillings* for his houſe wherein he dwelt ſhould offer every *Sunday* and every *Apoſtle's day* whereof the evening was faſted, *one half-penny*, and he that paid but *ten ſhillings* rent yearly ſhould offer but *one farthing*; all which amounted to the proportion of *two ſhillings and ſix-pence in the pound*, for there were *fifty-two Sundays*, and *eight Apoſtles days*, the vigils of which were faſted. And if it chanced that one of the *Apoſtles days* fell upon a *Sunday*, then there was but *one half-penny* or *farthing paid*; ſo that ſometimes it fell out to be ſomewhat leſs than *two ſhillings and ſix-pence* in the pound. And it appears by the *book caſes* in the reign of *Edward the Third*, that the proviſion made for the miniſters of *London* was by offerings and obventions; albeit the particulars are not aſſigned there, but muſt be underſtood according to the former ordinance made by *Niger*: and the payment of *two ſhillings and ſix-pence in the pound*, continuing until the 13 *Rich.* 2. *Arundel*, Archbiſhop of *Canterbury*, made an explanation of *Niger's* conſtitution, and thruſt upon the citizens of *London two and twenty* more *Saint days* than were intended by the conſtitution made by *Niger*; whereby the offerings now amounted to the ſum of *three*

ſhillings

ſhillings and five-pence in the pound. And there being ſome reluctation by the citizens of *London*, Pope *Innocent* in 5 *H.* 4. granted his bull, whereby *Arundel*'s explanation was confirmed; which confirmation (notwithſtanding the difference between the miniſters and citizens of *London*, about theſe *two-and-twenty Saint days* which were added to their number) Pope *Nicholas* alſo by his bull did confirm in 31 *Hen.* 6. againſt which the citizens of *London* did contend with ſo high a hand, that they cauſed a record to be made, whereby it might appear in future ages, that the order of explanation made by the Archbiſhop of *Canterbury* was done without calling the citizens of *London* unto it, or any conſent given by them. And it was branded by them as an order ſurreptitiouſly and abruptly obtained, and therefore more fit to have the name of a deſtructory than a declaratory order. But notwithſtanding this contention, the payment ſeems to have been moſt uſually made according to the rate of *three ſhillings and five-pence in the pound*. For *Lynwood*, who wrote in the time of *Hen.* 6. in his *Provincial Conſtitutions*, debating the queſtion, whether the merchants and artificers of the city of *London* ought to pay any tythes, ſhews that the citizens of *London*, by an ancient ordinance obſerved in the ſaid city, are bound every Lord's day, and every principal feaſt day, either of the Apoſtles or others, whoſe vigils are faſted, to pay *one farthing* for every *ten ſhillings* rent that they paid for their houſes wherein they dwelt.

In 36 *Hen.* 6. there was a compoſition made between the citizens of *London* and the miniſters, that a payment ſhould be made by the citizens according to the rate of *three ſhillings and five-pence in the pound*; and if any houſe were kept in the proper hand of the owner, or were demiſed without reſervation of any rent, then the church-wardens of the pariſh where the houſes were, ſhould ſet down a rate of the houſes, and according to that rate payment ſhould be made. After which compoſition ſo made, there was an act of common council made in 14 *Edw.* 4. in *London*, for the confirmation of the bull granted by Pope *Nicholas*. But the citizens of *London* finding, that by the common laws of the realm, no bull of the pope, nor arbitrary compoſition,

compoſition, nor act of common council could bind them in ſuch things as concerned their inheritance; they ſtill wreſtled with the clergy, and would not condeſcend to the payment of the ſaid *eleven pence* by the year, obtruded upon them by the addition of the *two-and-twenty Saint days*; whereupon there was ſubmiſſion to the Lord Chancellor, and divers others of the Privy Council, in the time of King *Hen.* 8. and they made an order for the payment of tythes according to the rate of *two ſhillings and nine-pence in the pound*; which order was firſt promulgated by a proclamation made, and afterwards eſtabliſhed by an act of parliament made in 27 *Hen.* 8. *c.* 21. intitled, "An act for the payment "of tythes within the city and ſuburbs of *London*, until "another law and order ſhall be made and publiſhed "for the ſame."

Ten years after this another law and order was made by the ſtatute of 37 *Hen.* 8. *c.* 12. (intitled, "An act "for tythes in *London*") as follows: "Whereas of "late time contention, ſtrife, and variance hath "ariſen and grown, within the city of *London* and the "liberties of the ſame, between the parſons, vicars, "and curates of the ſaid city, and the citizens and "inhabitants of the ſame, for and concerning the pay-"ment of tythes, oblations, and other duties within "the ſaid city and liberties: for appeaſing whereof, a "certain order and decree was made thereof by the "moſt Reverend Father in God, *Thomas* Archbiſhop "of *Canterbury*, *Thomas Audley*, Knight, Lord *Aud-*"*ley* of *Walden*, and then Lord Chancellor of *Eng-*"*land*, now deceaſed, and other of the King's moſt "Honourable Privy Council; and alſo the King's "letters patent, and proclamation was made thereof, "and directed to the ſaid citizens concerning the ſame; "whereupon it was after enacted in the parliament hol-"den at *Weſtminſter* by prorogation the fourth day of "*February*, in the twenty ſeventh year of the King's "moſt noble reign, that the citizens and inhabitants "of the ſame city ſhould, at *Eaſter* then next follow-"ing, pay unto the curates of the ſaid city and "ſuburbs, all ſuch and like ſums of money for "tythes, oblations, and other duties, as the ſaid "citizens and inhabitants, by the order of the ſaid

"late

" late Lord Chancellor, and other the King's moſt " Honourable Council, and the King's ſaid proclama- " tion, paid, or ought to have paid, by force and vir- " tue of the ſaid order at *Eaſter* in the year 1535; " and the ſame payments ſo to continue from time " to time, until ſuch time as any other order or law " ſhould be made by the King, and the two-and- " thirty perſons by the King to be named, as well for " the full eſtabliſhment concerning the payment of " all tythes, oblations, and other duties of the inha- " bitants within the ſaid city, ſuburbs, and liberties " of the ſame, as for the making of other eccleſiaſtical " laws of this realm of *England*; and that every per- " ſon denying to pay as is aforeſaid, ſhould, by the " commandment of the Mayor of *London* for the time " being, be committed to priſon, there to remain " until ſuch time as he ſhould have agreed with the " curate for his ſaid tythes, oblations, and other " duties, as is aforeſaid, as in the ſaid act more plainly " appeareth; ſince which act divers variances, con- " tentions, and ſtrifes, are newly riſen and grown be- " tween the ſaid parſons, vicars, and curates, and the " ſaid citizens and inhabitants, touching the payment " of the tythes, oblations, and other duties, by reaſon " of certain words and terms ſpecified in the ſaid or- " der, which are not ſo plainly and fully ſet forth as " is thought convenient and meet to be; for appeaſ- " ing whereof, as well the ſaid parſons, vicars, and " curates, as the ſaid citizens and inhabitants have " compromitted, and put themſelves to ſtand to ſuch " order and decree touching the premiſes as ſhall be " made by the ſaid Right Reverend Father in God; " and the ſeveral other perſons here under-mention- " ed, for a final end and concluſion to be had and " made touching the premiſes for ever; and to the " intent to have a full peace and perfect end between " the ſaid parties, his heirs and ſucceſſors, touching " the ſaid tythes, oblations, and other duties, for ever, " it is enacted, That ſuch end, order, and direction as " ſhall be made by the fore-named archbiſhop and " the ſeveral other perſons as aforeſaid, or any ſix of " them, before the firſt day of *March* next enſuing, " concerning the payment of tythes, oblations, and " other duties within the ſaid city and the liberties " thereof,

" thereof, and inrolled of record in the High Court " of Chancery, ſhall ſtand, remain, and be as an act " of parliament, and ſhall bind as well all citizens and " inhabitants of the ſaid city and liberties, for the " time being, as the ſaid parſons, vicars, curates, and " their ſucceſſors for ever, according to the effect, " purport and intent of the ſaid order and decree ſo " to be made and inrolled; and that every perſon " denying to pay any of his tythes, oblations, or " other duties contrary to the ſaid decree ſo to be " made, ſhall, by the commandment of the Mayor of " *London* for the time being, and in his default or " negligence, by the Lord Chancellor of *England* for " the time being, be committed to priſon, there to re- " main till ſuch time as he hath agreed with the " curate for the ſame."

Which decree made in purſuance hereof, is as follows, viz. " As touching the payment of tythes " in the city of *London*, and the liberties of the " ſame, it is fully ordered and decreed by the moſt " Reverend Father in God, *Thomas* Archbiſhop of " *Canterbury*, primate and metropolitan of *England*, " *Thomas* Lord *Wryotheſly*, Lord Chancellor of *Eng-* " *land*, *William* Lord *St. John*, preſident of his " Majeſty's council, and lord great maſter of his Ma- " jeſty's houſehold, *John* Lord *Ruſſel*, lord privy ſeal, " *Edward* Earl of *Hertford*, lord great chamberlain " of *England*, *John* Viſcount *Liſle*, high admiral of " *England*, *Richard Liſter*, Knight, chief juſtice of " *England*, and *Roger Cholmly*, Knight, chief baron " of his Majeſty's Exchequer, this twenty-fourth day " of *February*, in the year of our Lord, 1545, accord- " ing to the ſtatute in ſuch caſe lately provided, that " the citizens and inhabitants of the ſaid city and li- " berties thereof for the time being, ſhall yearly, with- " out fraud or covin, for ever pay their tythes to the " parſons, vicars, and curates of the ſaid city, and " their ſucceſſors for the time being, after the rate " hereafter following; that is to wit, of every *ten ſhil-* " *lings* rent by the year, of all houſes, ſhops, ware- " houſes, cellars, ſtables, and every of them, with- " in the ſaid city and liberty thereof, *ſixteen-pence half-* " *penny*, and of every *twenty ſhillings* rent by the year

" *two*

†

" *two ſhillings and nine-pence*, and ſo above the rent of " *twenty ſhillings* by the year, as ending from *ten ſhil-* " *lings* to *ten ſhillings*, according to the rate afore- " ſaid."

Item, " That where any leaſe is or ſhall be made " of any dwelling-houſe or houſes, ſhops, ware- " houſes, cellars, or ſtables, or any of them, by fraud " or covin, reſerving leſs rent than hath been accuſ- " tomed, or is, or where any ſuch leaſe ſhall be made " without any rent reſerved upon the ſame by reaſon " of any fine or income paid before hand, or by any " other fraud or covin; in every ſuch caſe the tenant " or farmer ſhall pay for his tythes of the ſame after " the rate aforeſaid, according to the quality of ſuch " rents as the ſame were laſt letten for, without fraud " or covin, before the making of ſuch leaſe."

Item, " That every owner or inheritor of any dwel- " ling-houſe or houſes, ſhops, warehouſes, cellars, " or ſtables, inhabiting or occupying the ſame him- " ſelf, ſhall pay after ſuch rate, according to the quan- " tity of ſuch yearly rent as the ſame was laſt letten " for, without fraud or covin."

Item, " If any perſon hath taken, or hereafter ſhall " take, any meaſe or manſion-place by leaſe, and the " taker thereof, his executor or aſſigns doth, or ſhall " inhabit in any part thereof, and hath within eight " years laſt paſt before this order, or hereafter ſhall let " out the reſidue of the ſame; in ſuch caſe the prin- " cipal farmer or farmers, or firſt taker or takers " thereof, their executors or aſſigns ſhall pay their " tythes after the rate aforeſaid, according to the " quantity of their rent by the year."

" And if any perſon ſhall take divers manſion- " houſes, ſhops, warehouſes, cellars, or ſtables, in " one leaſe, and ſhall let out one or more of them, " and ſhall keep one or more in his own hands, and " inhabit in the ſame, the ſaid taker and his execu- " tors or aſſigns ſhall pay their tythes after the rate " aboveſaid, according to the quantity of the yearly " rent of ſuch manſion-houſe or houſes retained in his

" own

" own hands; and his aſſignees of the reſidue of the " ſaid manſion-houſe or houſe ſhall pay their tythes " after the rate aboveſaid according to the quantity of " their yearly rents."

Item, " If ſuch farmer or farmers, or his or their " aſſigns of any manſion-houſe or houſes, ware- " houſes, ſhops, cellars, or ſtables, hath at any time " within eight years laſt paſt, or ſhall hereafter let " over all the ſaid manſion-houſe or houſes contained " in his or their leaſe to one or more perſons, the in- " habitants, leſſees, or occupiers thereof, ſhall pay " their tythes after the rate of ſuch rents as the inha- " bitants, leſſees, or occupiers, and their aſſigns, have " been, or ſhall be charged withal, without fraud or " covin."

Item, " If any dwelling-houſe within eight years " laſt paſt, was, or hereafter ſhall be, converted into " a warehouſe, ſtorehouſe, or ſuch like, or if a ware- " houſe, ſtorehouſe, or ſuch like, within the ſaid " eight years, was, or hereafter ſhall be converted " into a dwelling-houſe, the occupier thereof ſhall " pay tythes for the ſame after the rate above declared " of manſion-houſe rents."

Item, " That where any perſon ſhall demiſe any " dyehouſe or brewhouſe, with implements conveni- " ent or neceſſary for dying or brewing, reſerving " a rent upon the ſame, as well in reſpect of ſuch " implements as in reſpect of ſuch dyehouſe or brew- " houſe, the tenant ſhall pay his tythes after ſuch " rate as is aboveſaid, the third penny abated; and " every principal houſe or houſes, with key or wharf " having any crane or gibbet belonging to the ſame, " ſhall pay after the like rate of their rents as is afore- " ſaid, the third penny abated; and other wharfs be- " longing to houſes having no crane or gibbet, ſhall " pay for tythes as ſhall be paid for manſion-houſes in " form aforeſaid."

Item, " That where any manſion-houſe, with a " ſhop, ſtable, warehouſe, wharf with crane, timber- " yard, teinter-yard, or garden belonging to the ſame,

" or

" or as a parcel of the ſame, is or ſhall be occupied to-
" gether, if the ſame be hereafter ſevered or divided,
" or at any time within eight years laſt paſt were ſevered
" or divided; then the farmers or occupiers thereof
" ſhall pay ſuch tythes as is above ſaid, for ſuch ſhops,
" ſtables, warehouſes, wharf with crane, timber-yard,
" teinter-yard, or garden aforeſaid, ſo ſevered or di-
" vided, after the rate of their ſeveral rents thereupon
" reſerved.

Item, " That the ſaid citizens and inhabitants ſhall
" pay their tythes quarterly; that is to ſay, at the Feaſt
" of *Eaſter*, the Nativity of *St. John Baptiſt*, the Feaſt
" of *St. Michael the Archangel*, and the Nativity of our
" Lord, by even portions.

Item, " That every houſeholder paying 10*s.* rent, or
" above, ſhall for him or herſelf be diſcharged of their
" four offering days; but his wife, children, ſervants,
" or other of their family taking their rights of the
" church at *Eaſter*, ſhall pay 2*s.* for their four offering
" days yearly.

" PROVIDED ALWAYS, and it is decreed, that if
" any houſe, which hath been or hereafter ſhall be
" letten for *ten ſhillings* rent by the year, or more, be
" or hath been at any time within *eight years* laſt paſt,
" or hereafter ſhall be divided and leaſed into ſmall
" parcels or members, yielding leſs yearly rent than
" *ten ſhillings* by the year; the owner, if he ſhall
" dwell in any part of ſuch houſe, or elſe the prin-
" cipal leſſee (if the owner do not dwell in ſome part
" of the ſame) ſhall pay for the tythes after ſuch
" rate of rent as the ſame houſe was accuſtomed to
" be letten for before ſuch diviſion or dividing into
" parts or members, and the under farmers and
" leſſees to be diſcharged of all tythes for ſuch ſmall
" parcels, parts, or members, rented at leſs yearly
" rent than *ten ſhillings* by the year, without fraud or
" covin, paying *two-pence a-piece* yearly for *four offer-*
" *ing days*.

" PROVIDED ALWAY, and it is decreed, That for
" ſuch gardens as appertain not to any manſion-houſe,

" and

" and which any perſon holdeth in his hands for plea-
" ſure, or to his own uſe; the perſon holding the
" ſame ſhall pay no tythes for the ſame; but if any
" perſon which ſhall hold any ſuch garden, containing
" half an acre or more, ſhall make any yearly profit
" thereof by way of ſale, he ſhall pay tythes for the
" ſame after ſuch rate of his rent as is herein firſt above
" ſpecified."

" PROVIDED ALSO, That if any ſuch gardens, now
" being of the quantity of half an acre, or more,
" be hereafter by fraud or covin divided into leſs
" quantities, then to pay according to the rate above-
" ſaid."

" PROVIDED ALWAYS, That this decree ſhall
" not extend to the houſes of great men or noblemen,
" or noblewomen, kept in their own hands, and not
" letten for any rent, which in times paſt have paid
" no tythes, ſo long as they ſhall ſo continue unletten;
" nor to any halls of crafts or companies, ſo long as
" they be kept unletten, ſo that the ſame halls in time
" paſt have not uſed to pay any tythes."

" PROVIDED ALWAYS, and it is decreed, That
" this preſent order and decree ſhall not in any wiſe
" extend to bind or charge any ſheds, ſtables, cellars,
" timber-yards, nor teinter-yards, which were never
" parcel of any dwelling-houſe, nor belonging to any
" dwelling-houſe, nor have been accuſtomed to pay
" any tythes; but that the ſaid citizens and inhabi-
" tants ſhall thereof be quit of payment of any tythes,
" as it hath been uſed and accuſtomed."

" PROVIDED ALSO, and it is decreed, That where
" leſs ſum than after ſixteen-pence half-penny in the
" *ten ſhillings* rent, or leſs than *two ſhillings and nine-*
" *pence* in the *twenty ſhillings* rent, hath been accuſ-
" tomed to be paid for tythes; in ſuch places the ſaid
" citizens and inhabitants ſhall pay but only after
" ſuch rate as hath been accuſtomed."

Item, " It is alſo decreed, That if any variance,
" controverſy or ſtrife ſhall ariſe in the ſaid city for

" non-payment of any tythes; or if any variance or " doubt ſhall ariſe upon the true knowledge or diviſion " of any rent or tythes within the liberties of the ſaid " city, or of any extent of aſſeſſment thereof; or if " any doubt ariſe upon any other thing contained " within this decree, then upon complaint made by " the party grieved to the mayor of the city of *London* " for the time being, the ſaid mayor, by the advice of " counſel, ſhall call the parties before him, and make " a final end in the ſame, with coſts to be awarded " by the diſcretion of the ſaid mayor and his aſſiſtants, " according to the intent and purport of this preſent " decree."

" And if the mayor ſhall not make an end thereof " within *two months* after complaint to him made; " or if any of the ſaid parties find themſelves aggriev- " ed, the Lord Chancellor of *England* for the time " being, upon complaint to him made, within *three* " *months* then next following, ſhall make an end in " the ſame, with ſuch coſts to be awarded as ſhall be " thought convenient, according to the intent and " purport of the ſaid decree."

" PROVIDED ALWAYS, That if any perſon take " any tenement for a leſs rent than it was accuſtomed " to be letten for, by reaſon of great ruin or decay, " burning, or ſuch like occaſions or misfortunes; " ſuch perſon, his executors or aſſigns, ſhall pay tythes " only after the rate of the rent reſerved in his leaſe, " and none otherwiſe, as long as the ſame leaſe ſhall " endure."

Of every ten ſhillings rent by the year.] *See ſect.* 2. of the foregoing decree. It was reſolved in the caſe of *Meadhouſe* againſt *Taylor*, that a rent for half a year, and afterwards for another half year, is a yearly rent, or a rent by the year within the meaning of this decree. *Vide Noy* 130. *Gibſ. Cod.* 1221.

Of all houſes.] In the caſe of *Green* v. *Piper*, *Eaſt.* 34 *Eliz.* it was ſuggeſted, in order to hinder the granting of a conſultation, that the houſe belonged to a priory which was diſcharged of tythes by bull. But the court replied, that by the *common law* houſes paid no tythes;

tythes; and the right in the preſent caſe ſubſiſting immediately on this ſtatute, which lays them upon every houſe; no exemption ſhall be allowed but to ſuch houſes as are ſpecially exempted by the ſtatute itſelf. *Vide Cro. Eliz.* 276. *Mo.* 912. *Gibſ. Cod.* 1221.

By reaſon of any fine or income paid beforehand, or by any other fraud or covin.] *See ſect.* 3. of the ſaid decree. *M.* 5 *Ja.* between *Skidmore* and *Eire*, plaintiffs, in the prohibition againſt *Bell*, parſon of St. *Michael, Queenhithe*, in *London*. The caſe was this: the ſaid parſon libelled before the chancellor of *London* for the tythes of an houſe called the *Boar's Head* in *Bread-ſtreet* in the ſaid pariſh, the ancient farm-rent whereof was *five pounds* at the time of the ſaid decree and after; and that of late a new leaſe was made of the ſaid houſe, rendering the rent of *five pounds* a year, and over that a great income or fine, which was covenanted and agreed to be paid yearly at the ſame day; that the rent was paid as a ſum in groſs, and that ſo much rent might have been reſerved for the ſaid houſe as the rent reſerved and the ſum in groſs amounted unto: which reſervation and covenant were made to defraud the ſaid parſon of the tythes of the true rent of the ſaid houſe, which to him did appertain by the purport and true intention of the ſaid decree; and in this caſe four points were reſolved by the court: 1. If ſo much rent be reſerved, as was accuſtomed to be paid at the making of the ſaid decree (whatſoever fine or income be paid) that the parſon can aver no covin; for the words of the decree be, "Where any leaſe is or ſhall "be made of any dwelling-houſe by fraud or covin in "reſerving leſs rent than hath been accuſtomed:" ſo as if the accuſtomed rent be reſerved, no fraud can be alleged; for the fraud by the decree is, when leſſer rent than was then accuſtomed to be paid is reſerved, or if no rent at all be reſerved, for then tythe ſhall be paid according to the rent that then was laſt before reſerved to be paid, ſo as the decree conſiſteth upon four points; firſt, where the accuſtomed rent was reſerved; ſecondly, where the rent was increaſed, then the tythes ſhould be paid according to the whole rent; thirdly, where leſſer rent was reſerved; and fourthly, where

no rent was reſerved, but had been formerly reſerved. And this act and decree were very beneficial for the clergy of *London*, in reſpect of that which they had before. And the defendant in his libel confeſſeth that the accuſtomed rent was reſerved; and therefore no cauſe of ſuit. 2. It was reſolved, That as to ſuch houſes as were never letten to farm, but inhabited by the owner, this is *caſus omiſſus*, and ſhall pay no tythes by force of the decree. 3. It was reſolved, that where the decree ſaith, "Where no rent is reſerved by reaſon of any fine or income paid beforehand:" albeit no fine or income be paid in that caſe, yet if no rent be reſerved, the parſon ſhall have his tythes according to the decree; for that is put but for an example or cauſe why no rent is reſerved; and whether any fine or income were paid or no, is not material as to the parſon. 4. It was reſolved, That the parſon could not ſue for the ſaid tythes in the *eccleſiaſtical* court; for that the act and decree that raiſed and gave theſe kind of tythes did limit and appoint how and before whom the ſame ſhould be ſued for, and did appoint new and ſpecial judges to hear and determine the ſame; and in the end it was awarded that the prohibition ſhould ſtand. *Vide* 2 *Inſt.* 660.

Upon complaint made.] *See ſect.* 19. of the foregoing decree. In the aforeſaid caſe of *Meadhouſe v. Taylor*, it was held by the court that the complaint ought to be in writing (and not by word of mouth only) in nature of a *monſtrans de droit*, declaring all the title. *Vide Noy* 130. *Gibſ. Cod.* 1223.

To the mayor.] Purſuant to the aforeſaid caſe of *Skidmore v. Eire*, diverſe prohibitions have been granted (when tythes were ſued for upon this ſtatute) to the *eccleſiaſtical* court. But when it was pleaded in the year 1658, that the right of tythes, upon the foundation of this act, could not be cognizable in the *Exchequer*, by reaſon of the proviſion therein made for determining of all controverſies before the lord mayor or lord chancellor; it was held clearly by the barons, that the court of *Exchequer* had juriſdiction in the cauſe, becauſe the act had no negative words in it. Upon which I ſhall only obſerve, ſays Dr. Gibſon, that if affirmative

affirmative words will not exclude the temporal court, it may be hard to find a good reaſon why, according to the foregoing judgments, they ſhould exclude the ſpiritual court. *Vide Gibſ.* 1223.

On a Bill for tythe of houſes not within the city of *London*, and ſo not within *ſtatute* 37 *Hen.* 8. It was admitted by the plaintiff, that this demand was againſt common right, and he did not allege this payment to be either by cuſtom or preſcription, but that this was the only proviſion for St. *Saviour's*, *Southwark*, in right of which church the plaintiff claimed: it was proved that the houſes in the pariſh had, ſince the year 1653, generally paid *twelve ſhillings per annum*; but no proof that the defendant's houſe had paid for *twenty-five years*, but by one ſingle witneſs; yet the court decreed an account without directing an iſſue. *Vide Bunb. Rep.* 102. *Hil.* 1721.

On a bill by the vicar of *Cripplegate* for *two ſhillings and nine-pence per pound*, according to the rent of the houſes, purſuant to the decree and *ſtatute* 27 *Hen.* 8. and to ſupport the juriſdiction of this court (the ſtatute giving power to the lord mayor of *London* to determine, *&c.*) the following caſes were cited, *Hard.* 116. 2 *Inſt.* 660. *Lit. Rep.* 102. 141. *Degge* 351. *Watſon* 387. *Cro. Car.* 596. *Hob.* 11. Several inſtances were given, where the *two ſhillings and nine-pence per pound* had been decreed, as the caſe of St. *Bride's*, *Townley* v. *Wilſon*, *Mich.* 1705; *Sawyer* v. *Montford*, 1694; *Grant* v. *Cannon*, *Mich.* 5. *W. & M. Sheffield* v. *Serjeant*, 1658; St. *Swithin's*, *Humfreville* v. *Plumſted*; *Aldgate* pariſh, 21 *Car.* the difficulty was, that here appeared to have been paid from time to time ſeveral payments, as *ten ſhillings* for *T.*'s houſe, *ſix ſhillings* for *Borkett*'s, and *four ſhillings* for *Whicett*'s, and the charges in the vicar's books appeared to be the ſame, though in ſome of them the payments ſometimes varied, and the right of the vicar cannot be deſtroyed but by an uniform conſtant payment. (See the ſtatute.) This being a thing of great conſequence, the court took time to conſider of this decree.

In *Michaelmas* term, 1722, the court gave judgment: Baron *Price* held, that there ought to be a general decree for the plaintiff; *Mountague*, *Page*, and *Gilbert* directed an iſſue to try whether there had been ſuch cuſtomary payments as was ſet up by defendants; and a verdict was for the defendants. From this decree *Bennet* appealed, and the decree was confirmed. *Vide Bunb.* 106, 107. *Paſch.* 1722. Doctor *Bennett* v. *Treppas & al'.*

An iſſue was directed in this cauſe, to try whether there had been any variation in the payment of tythes, or ſums of money in lieu of them, for houſes in *London*, according to *ſtatute* 37 *Hen.* 8. It was now moved, that the plaintiff ſhould produce at the trial the books of the former rectors; and although it was objected, that theſe were properly private books, and the plaintiff's own evidence, yet as they had before been produced at the hearing of the cauſe, and as the iſſue to be tried is to inform the conſcience of the court, the jury ought to have all the lights the court can give them: *Per curiam*, the plaintiff was ordered to produce theſe books at the trial. *Vide Bunb.* 143.

After all, notwithſtanding the ſettlement by the aforeſaid decree, divers preſcriptions for the payment of leſſer rates than the parſons might require by the ſaid ſettlement, (as to pay *ten ſhillings* for the tythe of an houſe, although the rent thereof was *forty pounds* a year or more) have been gained and allowed. But upon the occaſion of the fire of *London* in the year 1666, as to the churches and houſes thereby conſumed, another ſtatute was made, namely *ſtat.* 22 & 23 *C.* 2. *c.* 15. (intitled, *An act for the better ſettlement of the maintenance of the parſons, vicars, and curates, in the pariſhes of the city of London*) which is as follows: "Whereas the tythes in the city of *London* were le-
"vied and paid with great inequality, and are, ſince
"the late dreadful fire there, in the rebuilding of the
"ſame, by taking away ſome houſes, altering the
"foundation of many, and the new erecting of others,
"ſo diſordered, that in caſe they ſhould not for the
"time to come be reduced to a certainty, many con-
"troverſies and ſuits of law might thence ariſe; it is
"therefore

" therefore enacted, that the annnal certain tythes " of the pariſhes within the ſaid city and liberties " thereof, whoſe churches have been demoliſhed, or " in part conſumed in the late fire; and which ſaid " pariſhes, by virtue of an act of this preſent parlia- " ment, remain and continue ſingle, as heretofore " they were, or are by the ſaid act annexed or united " into one pariſh reſpectively, ſhall be as follows: " that is to ſay, the annual certain tythes, or ſum of " money in lieu of tythes;" of

	£.	s.
The pariſh of Alhallows, Lombard-ſtreet	110	0
St. Bartholomew, Exchange — —	100	0
St. Bridget, *alias* Brides — — —	120	0
St. Bennet Finck — — —	100	0
St. Michael, Crooked-lane — —	100	0
St. Chriſtopher — — — —	120	0
St. Dionis Backchurch — — —	120	0
St. Dunſtan in the Eaſt — —	200	0
St. James, Garlick-hythe — — —	100	0
St. Michael, Cornhill — — —	140	0
St. Michael, Baſſiſhaw — — —	132	11
St. Margaret, Lothbury — —	100	0
St. Mary, Aldermanbury — —	150	0
St. Martin, Ludgate — — —	160	0
St. Peter, Cornhill — — —	110	0
St. Stephen, Coleman-ſtreet — —	110	0
St. Sepulchre — — —	200	0
St. Alhallows, Bread-ſtreet, and St. John Evangeliſt —— ——	140	0
Alhallows the Great and Alhallows the Leſs	200	0
St. Alban, Wood-ſtreet, and St. Olives, Silver-ſtreet —— ——	170	0
St. Anne and Agnes, and St. John Zachary	140	0
St. Auguſtine, and St. Faith ——	172	0
St. Andrew Wardrobe, and St. Anne, Black-friars —— —— —	140	0
St. Antholin, and St. John Baptiſt ——	120	0
St. Bennet, Grace-church, and St. Leonard, Eaſt-cheap —— ——	140	0
St. Bennet, Paul's wharf, and St. Peter's, Paul's wharf —— ——	100	0
Chriſt-church, and St. Leonard, Foſter-lane	200	0

Liſt of pariſhes as regulated, under Stat. 22 & 23 Car. 2. as to tythes.

	£.	s.
St. Edmund the King, and St. Nicholas Acons	180	0
St. George, Botolph-lane, and St. Botolph, Billingſgate	180	0
Lawrence Jury, and St. Magdalen, Milk-ſtreet	120	0
St. Magnus, and St. Margaret, New Fiſh-ſtreet	170	0
St. Michael Royal, and St. Martin, Vintry	140	0
St. Matthew, Friday-ſtreet, and St. Peter Cheap	150	0
St. Margaret Pattons, and St. Gabriel Fenchurch	120	0
St. Mary at Hill, and St. Andrew Hubbard	200	0
St. Mary Woolnoth, and St. Mary Woolchurch	160	0
St. Clement Eaſtcheap, and St. Martin Orgars	140	0
St. Mary Ab-church, and St. Lawrence Pountney	120	0
St. Mary Aldermary, and St. Thomas Apoſtle	150	0
St. Mary le Bow, St. Pancras, Soper-lane, and Alhallows, Honey-lane	200	0
St. Mildred Poultry, and St. Mary Colechurch	170	0
St. Michael Wood-ſtreet, and St. Mary Staining	100	0
St. Mildred, Bread-ſtreet, and St. Margaret Moſes	130	0
St. Michael, Queenhithe, and Trinity	160	0
St. Magdalen, Old Fiſh-ſtreet, and St. Gregory	120	0
St. Mary Somerſet, and St. Mary Mounthaw	110	0
St. Nicholas, Cole-abbey, and St. Nicholas, Olaves	130	0
St. Olave, Jewry, and St. Martin, Ironmonger-lane	120	0
St. Stephen, Walbrook, and St. Bennet, Sheerhog	100	0
St. Swythin, and St. Mary Bothaw	140	0
St. Vedaſt *alias* Foſter's, and St. Michael Quern	160	0

Sect. 3. Which reſpective ſums of money to be paid in lieu of tythes within the ſaid reſpective pariſhes, and aſſeſſed as herein after is directed, ſhall be the reſpective certain actual annual maintenance (over and above glebes and perquiſites, gifts and bequeſts, to the reſpective parſon, vicar, and curate of any pariſh for the time being, or to their ſucceſſors reſpectively, or to others for their uſe) of the ſaid reſpective parſons, vicar, and curates, who ſhall be legally inſtituted, inducted, and admitted into the reſpective pariſhes aforeſaid.

Sect. 4, 5, 6, 7. And for the more equal levying of the ſame upon the ſeveral houſes, buildings, and other hereditaments within the reſpective pariſhes, aſſeſſments were ordered to be made before *July* 24, 1671, upon all houſes, ſhops, warehouſes, and cellars, wharfs, keys, cranes, water houſes, tofts of ground (remaining unbuilt) and all other hereditaments whatſoever (except parſonage and vicarage houſes) the whole reſpective ſum by this act appointed, or ſo much of it as is more than what each impropriator is by this act injoined to allow.

Sect. 8. And three tranſcripts of the aſſeſſments were to be made; one to be depoſited amongſt the records of the city, another in the regiſtry of the biſhop of *London*, and another in the pariſh veſtry reſpectively, for a perpetual memorial thereof.

Sect. 9. The ſums aſſeſſed to be paid to the reſpective parſons, vicars, and curates, at the four moſt uſual feaſts, to wit, at the Annunciation of the Bleſſed Virgin, the Nativity of St. *John* Baptiſt, the Feaſt of St. *Michael* the Archangel, and the Nativity of our Bleſſed Saviour, or within fourteen days after each of the feaſts aforeſaid, by equal payments; the reſpective payments thereof to begin and commence only from ſuch time as the incumbent ſhall begin to officiate or preach as incumbent.

Sect. 10. Impropriators ſhall pay what *bona fide* they have uſed and ought to pay to the reſpective incumbents at any time before the ſaid late fire; the ſame to be

be computed as part of the maintenance of ſuch incumbent.

Sect. 11. And if any inhabitant ſhall refuſe or neglect to pay the incumbent the ſum appointed by him to be paid, (the ſame being lawfully demanded upon the premiſes;) it ſhall be lawful for the lord mayor, upon oath to be made before him of ſuch refuſal or neglect, to grant our warrants for the officer or perſon appointed to collect the ſame, with the aſſiſtance of a conſtable, in the day-time, to levy the ſame by diſtreſs and ſale of the goods of the party ſo refuſing or neglecting; reſtoring to the owner the overplus over and above the ſaid arrears, and the reaſonable charges of making ſuch diſtreſs.

Sect. 12. And if the lord mayor ſhall refuſe or neglect to execute any of the powers to him given by this act; it ſhall be lawful for the lord chancellor or lord keeper, or two or more of the barons of the Exchequer, by warrant under their hands and ſeals reſpectively, to do and perform what the ſaid lord mayor might or ought to have done in the premiſes.

Sect. 14. Provided that no court or judge, eccleſiaſtical or temporal, ſhall hold plea of or for any the ſum or ſums of money due and owing, or to be paid by virtue of this act; other than the perſons hereby authorized to have cognizance thereof: nor ſhall it be lawful to, or for any parſon, vicar, curate, or incumbent, to convene or ſue any perſon aſſeſſed as aforeſaid, and refuſing or neglecting to pay the ſame, in any court or courts, or before any judge or judges, other than what are authorized and appointed by this act for the hearing and determining of the ſame, in manner aforeſaid.

Sect. 15. PROVIDED ALSO, that it ſhall be lawful for the wardens and minor canons of *St. Paul's*, parſons and proprietors of the rectory of the pariſh of *St. Gregory* aforeſaid, to receive and enjoy all tythes, oblations, and duties, ariſing or growing due within the ſaid pariſh, in as large and beneficial manner as formerly they have or lawfully might have done.

And

And for the better recovering the ſums of money which ſhall be due according to the directions of this act, and for the levying of arrears where the occupier removes from the premiſes, or the houſes have ſtood empty, a decree was made in the year 1713, by *Harcourt*, chancellor, aſſiſted by the barons *Bury* and *Price*, in the caſe of *Savage* v. *Wood*, clerks, againſt *Harding and others*. *Vide Shaw's Par. L.* 45.

The ſtatutes concerning building fifty new churches in or near London and Weſtminſter, and providing for the miniſters thereof, are as follows:

Stat. 9 *Ann. cap.* 22. *ſect.* 2. The money ariſing by the duty on coals imported into the *Thames*, of *two ſhillings per* chaldron from 14th *May* 1716, and *three ſhillings* till 28th *Sept.* 1724, is to be paid into the *Exchequer*, and appropriated for building *fifty* new churches, of ſtone and other materials, with towers or ſteeples to each, and for purchaſing ſites of churches and church-yards, and burying-places, in or near *London* and *Weſtminſter*, and for making ſuch chapels, as are capable thereof, pariſh churches; and for purchaſing houſes for miniſters, and for applying 4000 *l. per ann.* out of the ſaid duties, towards repairing the collegiate church of *St. Peter, Weſtminſter*, and 6000 l. *per ann.* towards the finiſhing *Greenwich* hoſpital. Stat. 9 Ann. cap. 22. ſect. 2.

Sect. 3. There ſhall be *fifty* churches built, whereof one ſhall be in the pariſh of *Greenwich*.

Sect. 4. Chapels already built, if fit, may be converted into pariſh churches.

Sect. 5. The queen, by letters patent, may nominate commiſſioners, who ſhall inform themſelves in what pariſhes the new churches are moſt neceſſary to be built, and of proper places to built them, and of church-yards and burying-places to be bought; and ſhall limit the diſtinct pariſhes, &c.

Stat. 10. *Ann. c.* 11. *ſect.* 1. The commiſſioners for *fifty* new churches, or any *five* of them, are required to Stat. 10 Ann. cap. 11. ſect. 1.

to meet as often as they ſhall have occaſion, for building *fifty* new churches.

Sect. 2. The commiſſioners may purchaſe lands, *&c.* as they ſhall think proper for the ſaid new churches, and for church-yards, and for miniſters houſes.

Sect. 3. The lands ſo purchaſed ſhall be conveyed to *five* or more of the commiſſioners and their heirs, and they are to cauſe the churches to be built, and chapels already built to be made pariſh-churches, and to provide houſes for miniſters; and church-yards to be made and incloſed.

Sect. 4. They may provide more than one cemetery for any new pariſh-church, and without the bounds of the pariſh; and the ground purchaſed for that purpoſe ſhall be taken as part of the pariſh, after the purchaſe and conſecration thereof, and ſhall be diſcharged from any rates to the other pariſh out of which it was taken.

Sect. 7. The treaſury may iſſue out of the money ariſing by virtue of this or the former act 9 *Anne*, c. 22. ſuch ſums as five of the commiſſioners ſhall think neceſſary for purchaſing lands, *&c.* which money ſhall be paid to ſuch perſon as the crown ſhall appoint treaſurer thereof, not being a commiſſioner; and ſhall be accounted for by ſuch treaſurer, and diſburſed according to ſuch orders as he ſhall receive from the commiſſioners for the ſaid uſes; ſuch treaſurer to be accountable to the Exchequer, and to give ſecurity approved of by the treaſury.

Sect. 8. The commiſſioners may, by a parchment writing inrolled in *Chancery*, aſcertain the bounds of the ſite of each new church, and miniſter's houſe and church-yard, and alſo the diſtrict of each pariſh for every new church; and after the inrolment of ſuch writing and conſecration of the church, ſuch diſtrict ſhall be a diſtinct pariſh, except touching rates, relief for the poor, and rates for the highways.

Sect.

Sect. 9. The commiſſioners may, by writing inrolled in *Chancery*, take a part of any of the large pariſhes in and about *London* and *Weſtminſter*, where any new church ſhall be made, and unite the ſame to any other leſſer pariſh next adjoining, wherein a church is already built.

Sect. 10. There ſhall be a rector in every new church, and where there is a morning preacher in any chapel which ſhall be converted into a pariſh-church, ſuch preacher ſhall, after the conſecration, be the firſt rector, without any admiſſion, inſtitution, or induction; and in every new church, the firſt rector ſhall be appointed by the queen; and he and his ſucceſſors are incorporated, and ſhall be called the rector of ſuch new church, by the name that ſhall be given to it in the act of conſecration; and the freehold of the new church, *&c.* ſhall be in him and his ſucceſſors; and he and they may purchaſe lands, not exceeding the yearly value of 200*l.* for each church.

Sect. 11. The commiſſioners may enquire of the right of patronage, *&c.* of any church from which any part ſhall be taken as aforeſaid, and treat with the perſon who hath the right, for the dividing ſuch pariſh, and the tythes and dues thereunto belonging, to take effect after the firſt voidance, and for ſettling the right of patronage of each new church.

Sect. 12. Such ſettlement ſhall bind infants, *&c.*

Sect. 14. Until ſuch ſettlement can be made of the right of patronage in every new pariſh, the crown ſhall preſent upon any avoidance.

Sect. 15. The rectors of every new church (except the preſent preacher in a chapel) ſhall be preſented, inſtituted, collated, and inducted, as other rectors are; and they and the churchwardens ſhall be ſubject to the ordinary.

Sect. 16. This act ſhall not deprive the ſucceſſors of the rectors or vicars of the pariſh-churches, out of which any part ſhall be taken, of any tythes, or other profits,

profits, until ſuch agreement for dividing the pariſh be made and inrolled.

Sect. 17. This act ſhall not prejudice any proprietor of a chapel made a pariſh-church, or his intereſt in any pews, without his conſent under hand and ſeal.

Sect. 18. If any proprietor ſhall ſell his intereſt in a pew in any chapel, it ſhall be ſold only to an inhabitant of the pariſh.

Sect. 19. The firſt church-wardens, overſeers of the poor, and ſurveyors, and other pariſh officers, of every new pariſh, ſhall be elected by the commiſſioners, out of the inhabitants, within a month after the conſecration of the church; and all ſucceeding pariſh officers ſhall be choſen and ſworn yearly in every new pariſh, according to law.

Sect. 20. The commiſſioners, with the conſent of the ordinary, may, by writing inrolled in *Chancery*, name a number of the inhabitants of each new pariſh to be veſtrymen, who ſhall have the ſame power as the veſtrymen of the pariſh out of which the new pariſh is taken; and if there are no ſelect veſtrymen in that pariſh, then as the veſtrymen of the pariſh of *St. Martin in the Fields* in *Middleſex* now have; and upon the death or removal, *&c.* of any veſtryman, the reſt may chuſe another, being an inhabitant and houſholder.

Sect. 21. All parochial cuſtoms, *&c.* uſed in any pariſh ſhall, notwithſtanding ſuch diviſion, continue in both pariſhes.

Sect. 22. The commiſſioners, with the conſent of the miniſters, churchwardens and overſeers of the poor, and of the veſtry, or of *twenty* of the principal inhabitants where there is no ſelect veſtry, from which pariſh any part ſhall be taken, and of the pariſh to which it ſhall be appointed, or elſe the reſpective miniſters, pariſh officers, veſtrymen or principal inhabitants, with conſent of the ordinary, by writing inrolled in Chancery, may make a perpetual diviſion of ſuch pariſhes as to church rates, the poor, highways, and other

other pariſh rates; and may ſettle any annual ſum, or conſideration in reſpect thereof, or for equality of ſuch diviſion.

Sect. 23. Until ſuch agreement ſhall be made, the pariſh rates ſhall be aſſeſſed and levied through all parts which belong to ſuch preſent pariſh.

Sect. 24. The pariſh officers, with the veſtry or principal inhabitants of each pariſh, may meet every year on *Tueſday* in *Eaſter* week, or oftener, upon notice given on the *Sunday* before, and after morning ſervice aſſeſs the rates for the poor, *&c.* and other pariſh rates, and apportion the ſaid rates upon every part of ſuch preſent pariſh ſo divided; which rates ſhall be aſſeſſed and collected in each diſtrict by the proper officers, who ſhall diſtribute the rates in reaſonable proportions for every diſtrict, for the relief of the poor, *&c.* and other pariſh rates within ſuch diſtrict.

Sect. 25. When ſuch yearly agreements ſhall not be made for diſtributing ſuch rates, the pariſh officers for the diſtrict then remaining to ſuch preſent church may aſſeſs and collect of the inhabitants, through the limits of ſuch pariſh, all rates and taxes, as they might have done before any diviſion.

Sect. 26. This act ſhall not invalidate any eccleſiaſtical law of the church of *England*, or deſtroy any of the rights of the biſhop of *London*, or any other local ordinary, or any archdeacon, chancellor or official.

Sect. 27. He and they may viſit, inſtitute and exerciſe *eccleſiaſtical* juriſdiction in all pariſhes to be erected or divided, as in any other pariſh.

Sect. 30. The monies, to be iſſued in purſuance of this and the former act for building churches, ſhall be iſſued without fee.

Sect. 31. No burial ſhall be in or under any of the churches intended to be built. And the commiſſioners

may ſettle what ſum ſhall be paid to the rector and church-officers for burials in the church-yards.

Stat. 12 *Ann. cap.* 17. *ſect.* 2. The new church in the *Strand*, after it is finiſhed, ſhall be deemed one of the fifty churches to be built in purſuance of the act 9 *Ann. cap.* 22, *&c.*

Sect. 4. In every new church to be erected in purſuance to the act 10 *Ann. cap.* 11. within *Stepney* pariſh, the firſt rector ſhall be nominated by the principal and ſcholars of *Brazen Noſe College* in *Oxford*, and in every chapel in the ſame pariſh which ſhall be converted into a parochial church.

Stat. 1 Geo. 1. cap. 23. ſect. 2.

Stat. 1 *Geo.* 1. *cap.* 23. *ſect.* 2. All monies which ſhall be raiſed by the duty of *three ſhillings per* chalder upon coals imported into the *Thames*, from the 27th of *September* 1724, to the 28th of *September* 1729, by virtue of this act, ſhall be brought into the *Exchequer*; and are appropriated for the providing maintenances for the miniſters in the new churches to be erected in and about *London* and *Weſtminſter*, and ſhall be iſſued in ſuch manner as ſhall be directed by parliament.

Sect. 4. The King may by letters patent appoint commiſſioners, who, or any *five* of them, ſhall have power to execute all the powers, *&c.* in the ſaid acts; and alſo to inform themſelves in what manner a due maintenance may be provided for the ſaid miniſters.

Stat. 4 Geo. 1. cap. 14. ſect. 1.

Stat. 4 *Geo.* 1. *c.* 14. *ſect.* 1. The commiſſioners appointed by virtue of the two acts 9 *Ann. cap.* 22. and 10 *Ann. cap.* 11. ſhall cauſe the church of *St. Giles's in the Fields* to be rebuilt, and the ſaid church ſhall be taken as one of the *fifty* new churches.

Sect. 2. The profits of the fourth gallery ſhall be applied to the uſe of the poor of the ſaid pariſh.

Stat. 5 Geo. 1. cap. 9. ſect. 4.

Stat. 5 *Geo.* 1. *cap.* 9. *ſect.* 4. All the monies ariſing by the duties on coals imported into the port of *London* after *Lady-day* 1719, and before *Lady-day* 1751, ſhall

ſhall be paid into the Exchequer, and appropriated to the ſeveral uſes in this act preſcribed.

Sect. 5. For raiſing the ſum of 360,000 *l.* in ſuch proportions as ſhall be needful for building the ſaid churches, a yearly fund of 21,000 *l.* ſhall after *Lady-day* 1719, during thirty-two years, be a ſecurity for paying principal and intereſt of the ſaid 360,000 *l.*

Sect. 6. The treaſury are to direct the officers of the *Exchequer* to receive by way of loan ſuch ſums as the commiſſioners ſhall think neceſſary for the buildings, repairs, and other purpoſes, by the acts 9 *Ann. cap.* 22. and 10 *Ann. cap.* 11. intended, and to allow intereſt at 4 *l. per cent.* and the monies ſo lent ſhall be tax-free; and the lenders ſhall have tallies of loans, and orders for payment; the principal to be paid in courſe, and the intereſt every three months; and no fee ſhall be taken for payment; and the ſaid fund of 21,000 l. *per annum* ſhall be liable to ſatisfy ſuch orders without being diverted to any other uſe, on pain of *treble coſts* to the party grieved; and ſuch orders ſhall be aſſignable according to the courſe of the *Exchequer*.

Sect. 7. The monies ariſing on credit of the ſaid 21,000 *l. per annum*, and all the monies of the ſaid fund ſhall be applied towards building of churches, *&c.* repairing *Weſtminſter Abbey*, finiſhing *Greenwich Hoſpital*, making proviſion for miniſters, *&c.*

Sect. 8. The principal of the loans, together with the monies ſupplied out of the funds, ſhall not exceed 360,000 *l.*

Sect. 9. The treaſury are to iſſue out the monies ariſing by loan, and out of the monies of ſuch fund, ſuch ſums as the commiſſioners ſhall think neceſſary; which ſhall be paid to ſuch perſon as his Majeſty ſhall appoint to be the treaſurer, who is to diſburſe the ſame according to ſuch orders as he ſhall receive from the commiſſioners, and is to be accountable in the *Exchequer*, and ſhall give ſecurity, to be approved by the treaſury.

Sect. 11. All the powers and clauſes in the ſaid acts of 9 *Ann. cap.* 22. and 10 *Ann. cap.* 11. and 1 *Geo.* 1. *cap.* 23. or in any other act for building the ſaid churches, ſhall continue.

Sect. 12. The King may appoint commiſſioners to execute the powers in the ſaid recited acts and in this act, touching the building and repairing of the ſaid churches.

Stat. 12 Geo. 1. cap. 39. ſect. 1.

Stat. 12 *Geo.* 1. *cap.* 39. *ſect.* 1. The ſum of 2500 *l.* part of the ſum of 360,000 *l.* by the act 5 *Geo.* 1. *cap.* 9. appointed to be raiſed, ſhall be allotted for the rector of the new church of *St. Mary le Strand*, and the treaſurer ſhall diſpoſe of the ſaid 2500 *l.* according to ſuch orders as he ſhall receive from the commiſſioners, in purchaſing lands, *&c.* to be conveyed to the rector of the ſaid new church and his ſucceſſors for ever; and in the mean time place out the ſame by order of the commiſſioners, on real ſecurities or public funds.

Sect. 2. And for a farther proviſion for the rector of Saint *Mary le Strand*, the ſum of *one hundred and twenty-five pounds per ann.* ſhall be raiſed by an equal pound-rate on the inhabitants (except the rector, and ſuch as ſhall not pay to the poor) within the diſtrict appointed for the pariſh of St. *Mary le Strand:* and for that purpoſe the rector, churchwardens, and veſtry, are yearly on *Eaſter Tueſday*, or within fourteen days after, on notice given in the church after divine ſervice the *Sunday* before, to make an aſſeſſment on the inhabitants for raiſing by an equal pound-rate; ſuch yearly ſum for the maintenance of the rector; and if the veſtry ſhall neglect to make ſuch aſſeſſment, it ſhall be lawful for the churchwardens alone, at any time within *fourteen days* after ſuch neglect to make ſuch aſſeſſment.

Sect. 3. If the churchwardens ſhall neglect to make the aſſeſſment, they ſhall forfeit *one hundred pounds*, to be recovered by any perſon who will ſue.

Sect.

Sect. 4. The aſſeſſment ſhall be allowed by two juſtices of *Middleſex*, and the ſums ſhall be collected by perſons nominated by the veſtry or churchwardens; and the collector refuſing to act ſhall forfeit to the crown *one hundred pounds*, to be recovered as above.

Sect. 5. If any perſon ſhall refuſe to pay the ſum aſſeſſed, it ſhall be lawful for the collector, by warrant of two juſtices, to levy the ſame by diſtreſs and ſale of goods.

Sect. 6. If any perſon ſhall find himſelf aggrieved by any aſſeſſment, on complaint made and notice in writing, within *ſix days* after demand of the monies aſſeſſed, given to the collectors, the juſtices of peace of *Middleſex*, at their next quarter-ſeſſions, are to hear and determine the ſame.

Sect. 7. Where any houſes, *&c.* ſhall be unoccupied, and where any inhabitants ſhall remove during the continuance of the aſſeſſment, the monies aſſeſſed not exceeding one quarterly payment ſhall be levied on the next tenant.

Sect. 8. The churchwardens, within *fourteen days* after every aſſeſſment, and the appeal determined, ſhall make two tranſcripts thereof in parchment, and ſubſcribe the ſame, and within *two days* ſhall deliver one of them to the rector, and the other ſhall be ſet up for *three weeks* in the moſt public place in the church, and afterwards remain in the veſtry.

Sect. 9. The produce of the ſaid yearly ſum of *one hundred and twenty-five pounds* ſhall be the annual maintenance of the rector, over and above ſuch ſurplice-fees as belong to the rector (*Eaſter* offerings excepted) and the houſe for the habitation of the rector, and over and above all gifts and benefits, not exceeding in the whole the yearly value of *two hundred pounds*.

Sect. 10. The rectory of St. *Mary le Strand* ſhall not be held *in commendam*.

Sect. 11. If the commiſſioners ſhall purchaſe a houſe for the habitation of the rector without the bounds of the pariſh (but near thereunto) the houſe ſhall, after the inrolment in *Chancery* of the bargain and ſale, whereby the ſame ſhall be conveyed, be deemed part of the pariſh of St. *Mary le Strand.*

Sect. 12. The pariſh-clerk of St. *Mary le Strand* ſhall be a member of the corporation of pariſh-clerks.

Sect. 13. If any ſuit be commenced for any thing done in purſuance of this act, the defendant may plead the general iſſue, *&c.* and on verdict, *&c.* ſhall recover treble coſts.

Sect. 14. This act ſhall be a public act.

Stat. 13 Geo. 1. cap. 35. ſect. 1.

Stat. 13 *Geo.* 1. *cap.* 35. *ſect.* 1. The pariſhioners of the pariſh of St. *Catherine Cree-church*, otherwiſe *Chriſt-Church*, *London*, ſhall pay to the maſter and fellows of *Magdalen College*, *Cambridge*, during their eſtate in fee in the impropriate rectory and tythes of the ſaid pariſh, *one hundred and fifty pounds per ann.* clear of deductions, at the four uſual feaſt days, in lieu of all tythes, oblations, offerings, fruits, profits, and advantages, from the owners or occupiers of any houſes, *&c.* within the ſaid pariſh, and for the impropriator's providing the pariſh with a curate.

Sect. 3. If default ſhall be made in payment of the ſaid yearly ſum of *one hundred and fifty pounds thirty days* after any of the ſaid feaſts; oath of ſuch default being made before any of the barons of the *Exchequer*, or before the Lord Mayor of *London*, or any juſtice of peace for that city, it ſhall be lawful for the ſaid baron, *&c.* to ſummon ſuch perſons as ſhall have been appointed to collect the ſaid monies, and ſuch other perſons as they ſhall think neceſſary, and to inquire of ſuch default; and if ſuch collector hath received any monies, and neglected to pay the ſame, it ſhall be lawful for the ſaid baron, *&c.* to iſſue warrants to diſtrain the goods of ſuch collectors, towards ſatisfaction of ſuch money, and to ſell ſuch goods; and for want of goods, to iſſue their warrant for impriſoning ſuch deficient collectors,

lectors, till payment be made: and if ſuch collector ſhall not ſatisfy the monies for which he ſhall ſtand committed, within ten days, or if the duties ſhall not be paid to the collector, it ſhall be lawful for the ſaid maſter and fellows, *&c.* to diſtrain for the arrears, upon any the goods of the pariſhioners; and the goods ſo diſtrained to keep four days, to be appraiſed by two perſons, and ſold for payment of the money. PROVIDED, That no diſtreſs be made on the goods of any perſon for more than *five pounds*. PROVIDED, That ſuch payment ariſing by diſtreſs ſhall in no wiſe diſcharge the impriſonment of any collector till payment be made to a veſtry; which being paid, ſhall be applied in eaſe of the next rate: and if the goods of any inhabitant be diſtrained, the collector ſhall ſatisfy the money, together with his charges, out of the firſt money that ſhall come to his hands.

Sect. 4. The churchwardens and veſtry are required yearly on the *twenty-fifth* of *March* (notice being given in the church the *Sunday* before) to make an aſſeſſment by a pound-rate, upon all occupiers of houſes or tenements in the pariſh, for raiſing the ſaid yearly ſum of *one hundred and fifty pounds* in lieu of tythes, *&c.* which rates ſhall be ſubſcribed by the alderman of the ward, or any two juſtices of peace for the city; and the ſums ſhall be collected quarterly, by ſuch perſons as ſhall by the veſtry be yearly appointed.

Sect. 5. If any perſon ſhall find himſelf aggrieved by any rate, on complaint to the alderman of the ward, or to any two juſtices of the peace for the city, within ten days after notice of ſuch rate given to the party aſſeſſed, the ſaid alderman or juſtices, ſummoning the party and the churchwardens, ſhall have power within *five days* to hear and determine the matter.

Sect. 6. If any perſon ſhall refuſe the office of collector, (not being privileged from ſerving pariſh offices) it ſhall be lawful for the veſtry to impoſe a fine on ſuch perſon, not exceeding *ten pounds*, which ſhall be levied by diſtreſs and ſale of goods, by warrant of the lord mayor and two juſtices of peace, to be applied to the uſe of the poor; and it ſhall be lawful for any veſtry to

appoint other collectors inſtead of thoſe refuſing, dying, failing, or removing.

Sect. 7. Collectors ſhall not be obliged to ſerve that office more than *one year*, and ſhall be exempted from the office of overſeer or collector for the poor.

Sect. 8. Every collector ſhall quarterly or oftener account for, and pay to the receiver appointed by the veſtry, all money collected over and above the ſaid *one hundred and fifty pounds*; and in caſe of neglect, the like remedy ſhall be had, as is provided for the recovery of the ſum; and ſuch overplus monies ſhall be diſpoſed of as the common ſtock of the pariſh.

Sect. 9. If any perſon ſhall neglect to pay the money aſſeſſed, *four days* after demand, or perſonal notice given, or left in writing at the place of abode of ſuch perſon, then (the time of appeal being lapſed, or the appeal determined) it ſhall be lawful for the collector in the day-time to enter into any houſe of ſuch perſon (taking to his aſſiſtance the conſtable or other peace officer) to diſtrain the goods of ſuch perſon, and to ſell the ſame for ſatisfaction of ſuch rate.

Sect. 10. If any loſs or deficiency ſhall happen in the ſaid rates, the ſame ſhall be made good by re-aſſeſſment to be added to the next rate; and if the churchwardens and veſtry ſhall neglect to make ſuch rates, and to appoint collectors *twenty days*, it ſhall be lawful for ſuch churchwardens alone, within *ten days* after ſuch neglect, to make ſuch rates, and to appoint collectors; and if ſuch churchwardens ſhall neglect, *&c.* they ſhall be committed to priſon till ſuch rates, *&c.* be made, and collectors appointed.

Sect. 11. The inhabitants ſhall repair the chancel of the ſaid pariſh church, and receive all profits from burials in the church, and all other profits which ſhall ariſe by the chancel; the cuſtomary dues payable to the curate excepted.

Sect. 12. The yearly ſum of *ſeventy pounds* ſhall be paid by the maſter and fellows of *Magdalen College* in *Cambridge*,

Cambridge, out of the ſums to be paid to them by this act, to the officiating curate, clear of all deductions, by four equal payments on the feaſt-days before-mentioned; and it ſhall be lawful for the perſons appointed to collect the rates, out of the monies collected, to pay the ſaid *ſeventy pounds per annum* to ſuch curate; and the curate ſhall take to his own uſe the ſurplice-fees.

Sect. 13. If any action ſhall be commenced againſt any perſon for what he ſhall do in purſuance of this act, he may plead the general iſſue, and on a verdict, *&c.* ſhall recover treble coſts.

Sect. 14. This act ſhall be a public act.

Stat. 1 *Geo.* 2. *cap.* 15. *ſect.* 12. For raiſing a maintenance for the rector of the new church in the Hamlet of *Spitalfields*, within the pariſh of St. *Dunſtan*, *Stepney*, the ſum of 3000 *l.* part of the monies intended by the act 1 *Geo.* 1. *cap.* 23. to be raiſed for proviſion for miniſters of the fifty new churches, ſhall be allotted for the ſhare which the rector of the new church ſhall have. Stat. 1 Geo. 2. cap. 15. ſect. 12.

Sect. 2. In lieu of a certain ſum of money, to be by the commiſſioners appointed to be paid to the rector for every burial, and towards raiſing the yearly ſum of *one hundred and twenty-five pounds*, agreed to be raiſed within the diſtrict, and paid towards the maintenance of the rector, there ſhall be paid to the churchwardens of the new pariſh the ſums following, *viz.* for every burial in the church-yards, ſuch ſums as the veſtry ſhall, with the conſent of the ordinary, ſettle, not exceeding *thirty ſhillings*, nor leſs than *two ſhillings*, (fees on the burial of any perſon who received alms, to be paid by the overſeers of the poor;) and for the liberty of making vaults, or ſetting up any monument, ſuch ſums as the veſtry ſhall appoint; and from the conſecration of the church, and the induction of a rector, it ſhall be lawful to depoſit any corpſe in the vaults under the church or ſteeple, ſo as the floor of ſuch vaults be not broke; and ſuch money as ſhall be appointed by the veſtry for depoſiting the corpſe ſhall be paid to the churchwardens towards the maintenance of the rector.

Sect. 3. It ſhall be lawful for the churchwardens to make vaults, and ſet up monuments, and depoſit corpſe, without any hindrance by the rector.

Sect. 4. Towards the further maintenance of the rector, the churchwardens ſhall yearly pay to him *one hundred and twenty-five pounds*, without deduction for taxes, at the four uſual feaſts, out of the monies received in purſuance of this act; and if ſuch monies ſhall be deficient, then out of any public monies belonging to the pariſh, not ariſing by any poor-rate or pound-rate, as the veſtry ſhall direct, which other money ſhall be made good out of the next ſurplus of the burial monies.

Sect. 5. If default be made in payment of the yearly ſum of *one hundred and twenty-five pounds* to the rector *twenty-one days* after any of the days of payment, the rector may recover the ſame againſt the churchwardens by action of debt, *&c.*

Sect. 6. It ſhall be lawful for the rector, inſtead of proceeding by action, to make his complaint of ſuch default to any one juſtice of peace for *Middleſex*; and on ſuch complaint, and oath made of the ſame in arrear, the juſtice by warrant may ſummon the perſons making default, at ſuch time as he ſhall appoint, not exceeding *four days* from the date of the warrant; and if ſufficient cauſe ſhall not be ſhewn (oath being made of due notice of ſuch ſummons, in caſe the party concerned ſhall not attend) the juſtice may by warrant cauſe all ſuch monies in arrear to be levied by diſtreſs and ſale of goods, the coſts to be aſcertained on oath before the juſtice; and if ſufficient diſtreſs cannot be had, the juſtices are to commit the offenders to the common gaol till they have paid all arrears.

Sect. 7. All ſucceeding churchwardens ſhall be liable to make good, out of any pariſh monies in their hands, all arrears of the ſaid yearly ſum of *one hundred and twenty-five pounds*, as aforeſaid, ſo as ſuch arrear do not exceed *one year's payment*, and ſo as ſuch action be commenced, or complaint made againſt the ſucceeding church-

churchwardens, within *three months* after their being ſworn into the office.

Sect. 9. The rector, churchwardens, and overſeers for the poor of the new pariſh, and all perſons who have ſerved or paid fines for the office of churchwarden and overſeers of the poor for the hamlet of *Spitalfields*, or the new pariſh, ſo long as they ſhall continue houſeholders within the pariſh and pay to the poor's rate, ſhall be the veſtrymen of the new pariſh, and ſhall meet from time to time, on notice to be publiſhed in the church by order of the rector, churchwardens, or overſeers, on the Lord's day next preceding, after divine ſervice; and the ſaid veſtrymen ſhall elect a lecturer, as alſo churchwardens, ſideſmen, pariſh-clerk, and all other officers, who were uſually choſen for the hamlet; and alſo elect and put out the ſexton, grave-diggers, and all other officers and ſervants to be employed about opening the pews, or otherwiſe in the church; and the lecturers ſhall be admitted by the rector to the uſe of the pulpit.

Sect. 10. The diſtrict ſet out for a new pariſh ſhall be a diſtinct pariſh; the name of which ſhall be given to the church in the act of conſecration; and the inhabitants ſhall be diſcharged as well againſt the rector of the new church as againſt the rector of the pariſh of *Stepney*, from all *ſmall tythes*, *Eaſter offerings*, *garden-pennies*, and all other duties ariſing within the new pariſh.

Sect. 11. All great tythes, or *modus* or compoſition in lieu thereof, within the new pariſh, ſhall continue to be paid to the principal and ſcholars of *King's Hall* and college of *Brazen Noſe*, in *Oxford*, or the perſons to whom they belong.

Sect. 14. The proviſions hereby made for the rector ſhall be the annual maintenance of the rector, over and above ſurplice-fees, and the houſe for his habitation, and over and above all gifts and bequeſts to the rector; provided, that no ſurplice-fees upon any burial ſhall be taken by the rector, unleſs where he ſhall be deſired to perform the burial office, or part thereof, in the

the church, and the corpſe be carried into the church, and then only ſuch ſurplice-fees as ſhall be ſettled by the veſtry, with the conſent of the ordinary, who are alſo to ſettle all other fees payable to each other officer belonging to the church.

Sect. 18. The payments for repairing the highways within the pariſh of *Stepney* ſhall be the ſame as they were before this act.

Stat. 2 Geo. 2. cap. 30. Sect. 1.

Stat. 2 *Geo.* 2. *c.* 30. *ſect.* 1. Towards raiſing a maintenance for the rector of the new church in the hamlet of *Wapping*, *Stepney*, in the pariſh of St. *Dunſtan*, *Stepney*, in *Middleſex*, the ſum of *three thouſand pounds* ſhall be allotted as the ſhare which the rector ſhall have out of the monies intended by the act 1 *G.* 1. *cap.* 23.

Sect. 2. For the better maintenance of the rector, there ſhall be paid to the churchwardens, for every burial in the church-yards, ſuch ſums as the veſtrymen, with conſent of the biſhop, ſhall ſettle, not exceeding *thirty ſhillings*, or leſs than *two ſhillings*, (fees for burials of the poor to be paid by the overſeers;) and for liberty of making vaults or monuments in the church-yard or church, ſuch ſums as the veſtrymen ſhall appoint; and corpſe may be depoſited in any vaults belonging to the church or ſteeple, ſo as the floor be not broken up; and the money for depoſiting the corpſe ſhall be paid to the churchwardens towards the maintenance of the rector.

Sect. 4. Towards the better maintenance of the rector, the churchwardens ſhall pay him the yearly ſum of *one hundred pounds*, *tax-free*, at the four uſual feaſts, out of the monies received in purſuance of this act.

Sect. 9. The rector, churchwardens, and overſeers of the poor, and all perſons who ſhall pay *two ſhillings per* month to the poor, and no others, ſhall be veſtrymen of the new pariſh, and ſhall meet, *&c.*

Stat. 3 Geo. 2. cap. 3. ſect. 1.

Stat. 3 *Geo.* 2. *cap.* 3. *ſect.* 1. Towards raiſing a maintenance for the rector of the new church of St. *Mary*

Mary of *Stratford Bow*, in the county of *Middleſex*, the ſum of *three thouſand five hundred pounds*, part of the monies intended by the act 1 *Geo.* 1. *cap.* 23. ſhall be allotted as the ſhare which the rector of the ſaid new church ſhall have out of the ſame monies; and if no purchaſe can be obtained in *three years*, the rector ſhall not be intitled to any other intereſt than 3 *l. per cent.* till ſuch purchaſe can be obtained.

Sect. 2. For the better maintenance of the rector, the churchwardens are impowered to raiſe monies; on the pews in the church and chancel, by letting them to inhabitants, not to exceed *forty-ſix pounds per annum*, and alſo the ſums following, *viz.* for every burial, in the church-yard, ſuch ſums as the veſtry, with the allowance of the ordinary, ſhall appoint, not exceeding *forty ſhillings*, nor leſs than *three ſhillings* for every burial, (ſuch fees for the burial of any perſon who received alms from the pariſh to be paid by the overſeers;) and for liberty to make any vault, or ſet up any monument in the church or cemetry, ſuch ſums as the veſtry ſhall appoint; and it ſhall and may be lawful to depoſit corpſe in any vault, under the church or ſteeple, ſo as the floor of ſuch vault be not broken; and the money for depoſiting the corpſe ſhall be paid to the churchwardens for the better maintenance of the rector.

Sect. 4. The churchwardens ſhall yearly pay, out of any pariſh-monies in their hands, to the rector, the ſum of *forty pounds*, without deduction for taxes, at the four uſual feaſts.

Sect. 7. The rectors of the new pariſh of *Saint Mary of Stratford Bow* ſhall be intitled to all ſurplice-fees and perquiſites, over and above the houſe for habitation; and all gifts and profits, *ſmall tythes*, *Eaſter offerings*, and *garden-pennies*, excepted.

Sect. 9. The new pariſh ſhall be deemed a diſtinct pariſh, by the name of *St. Mary of Stratford Bow*; and be divided from the pariſh of *St. Dunſtan Stepney*, and ſhall be diſcharged from all *ſmall tythes*, *Eaſter offerings*, *garden-pennies*, and all other duties.

Stat.

Stat. 3 Geo. 2. cap. 17. ſect. 1.

Stat. 3 *Geo.* 2. *cap.* 17. *ſect.* 1. Towards raiſing a maintenance for the rector of the new church in the hamlet of *Limehouſe*, in the pariſh of *St. Dunſtan in Stepney*, *Middleſex*, and part of the hamlet of *Ratcliff*, the ſum of 3500 *l.* part of the money intended by the act 1 *Geo.* 1. *cap.* 23. ſhall be allotted for the ſhare which the rector ſhall have.

Sect. 5. Towards making further proviſion for maintenance of the rector, the churchwardens ſhall pay to ſuch rector, out of any pariſh monies, the yearly ſum of *ſixty pounds*, without deduction for taxes, at the four uſual feaſts.

Sect. 10. The rector, churchwardens, and overſeers, and all other perſons who ſhall pay *twelve ſhillings* each book to the poor of the new pariſh, and none others, ſhall be veſtrymen, and ſhall meet and elect a lecturer.

The following part of this act is to the ſame effect of the act for *Spitalfields* church, which ſee before, in *ſtat.* 2 *Geo.* 2. *c.* 10. *ſect.* 10. except the following ſection.

Sect. 10. The inhabitants of that part of the hamlet of *Ratcliff*, which is intended to be part of the new pariſh, who ſhall pay *two ſhillings and ſix-pence* per month to the poor's rates of *Ratcliff*, ſhall be veſtrymen of the new pariſh; but they ſhall not intermeddle in any affairs which concern the hamlet of *Limehouſe*, in thoſe reſpects wherein that hamlet and the ſaid part of the hamlet of *Ratcliff* are to continue diſtinct.

Stat. 3 Geo. 2. cap. 19. ſect. 1.

Stat. 3 *Geo.* 2. *c.* 19. *ſect.* 1. Towards raiſing a maintenance for the rector of the new church near *Bloomſbury-market*, in the pariſh of *St. Giles in the Fields*, in *Middleſex*, the ſum of *three thouſand pounds*, part of the monies intended by the act 1 *Geo.* 1. *cap.* 23. ſhall be allotted for the ſhare which the rector ſhall have.

Sect. 2. The inhabitants of *St. Giles in the Fields* ſhall pay to the treaſurer of the commiſſioners *one thouſand two hundred and fifty pounds*, and the ſaid treaſurer is to lay

lay out the ſame as he is to lay out the before-mentioned *three thouſand pounds*, and ſhall pay the produce of the ſaid *one thouſand two hundred and fifty pounds* to the rector of the new church, for his better maintenance; and if no purchaſe can be had within five years, the rector ſhall not be intitled to any other intereſt than *three pounds per cent.*

Sect. 3. The annual profits of the lands, *&c.* to be purchaſed with the ſaid ſums of *three thouſand pounds*; and *one thouſand two hundred and fifty pounds* ſhall be the annual maintenance of the rector of the new church, over and above ſurplice-fees, *Eaſter* offerings, and other dues, and the houſe for his habitation, and over and above all gifts, not exceeding the yearly value of *two hundred pounds.*

Sect. 5. The commiſſioners, with the conſent of the veſtry of the new pariſh, ſhall aſcertain what ſums ſhall be paid to the rector, and each officer, for every burial; which ſums ſhall be regiſtered in *Doctors Commons.*

Sect. 6. The vaults and rooms under the church, excepting thoſe belonging to the rector's dwelling-houſe, and alſo the veſtry-room, together with the ſeats in the church, ſhall be veſted in the churchwardens, for the public uſes of the new pariſh, under the directions of the veſtry; but the vaults ſhall not be diſpoſed of, or applied to any uſe, without the conſent of the rector.

Sect. 10. The lecturer, or afternoon preacher, for the new pariſh, ſhall be elected by the rector and veſtrymen, in the veſtry-room; and if there ſhall be an equality of voices, the perſon preſiding ſhall have a caſting vote; and the lecturer ſhall be permitted by the rector to have the uſe of the pulpit.

Sect. 11. There ſhall not be hung up in the ſteeple of the new church more than one bell.

Sect. 13. The churchwardens, overſeers of the poor, and other pariſh officers for the new pariſh, ſhall be annually

annually choſen, as ſuch reſpective officers are for the pariſh or *St. Giles in the Fields*; and all rates for the poor of both pariſhes ſhall be made jointly; and the workhouſe ſhall be for the joint uſe of both pariſhes.

Sect. 14. All rights are ſaved to the moſt noble *Wriotheſly* Duke of *Bedford.*

Sect. 15. If any action be commenced for any thing done in purſuance of this act, it ſhall be brought within *three months* after the fact, and ſhall be laid in *Middleſex*; and the defendant may plead the general iſſue, *&c.* and on a verdict, *&c.* recover *treble coſts.*

Sect. 17. This act ſhall be a public act.

Stat. 3 Geo. 2. cap. 33. ſect. 1.

Stat. 3 *Geo.* 2. *c.* 33. *ſect.* 1. The ſum of 3500*l.* part of the monies intended by the act 1 *Geo.* 1. *cap.* 23. ſhall be allotted for the ſhare which the miniſter of the new church in the pariſh of St. *Nicholas*, *Deptford*, in the counties of *Kent* and *Surry*, ſhall have.

Sect. 4. For further proviſion for the maintenance of the rector, the churchwardens ſhall pay him the yearly ſum of *ſeventy pounds*, out of any pariſh-monies in their hands, at the four uſual feaſt-days, without abatement for taxes, *&c.* and if the monies fall ſhort, then out of any public monies in their hands, not ariſing by any poor's or pound-rate, as the veſtry ſhall direct; to be replaced out of the next ſurplus ariſing by burials.

Sect. 5. In default of payment of the ſaid yearly ſum of *ſeventy pounds*, *twenty-eight days* after the ſame ought to be paid, the rector may ſue for the ſame againſt the churchwardens, *&c.*

Sect. 8. The miniſter, churchwardens, overſeers for the poor, and all other pariſhioners who ſhall pay to the poor, ſhall be the veſtrymen of the new pariſh, and ſhall meet on notice in the church, by order of the rector, churchwardens, and overſeers, or either of them, on the preceding Lord's day, after divine ſervice; and ſhall elect churchwardens, ſideſmen, pariſh-clerk, and

and all other officers for the ſaid pariſh; and alſo may elect and amove the clerk, ſexton, grave-digger, and all other officers and ſervants employed in opening pews or otherwiſe about the church; and may alſo nominate a lecturer, who ſhall be admitted by the rector to have the uſe of the pulpit.

Sect. 9. The diſtrict ſet out for a new pariſh ſhall be a diſtinct pariſh, divided from the pariſh of *St. Nicholas, Deptford*, and ſhall be diſcharged from payment of *Eaſter offerings, garden-pennies*, and all other dues.

Sect. 10. If any perſon ſhall be aggrieved by any rate, he may appeal to the quarter-ſeſſions of *Kent* or *Surrey*, as the premiſes aſſeſſed ſhall lie.

Sect. 11. All tythes ariſing within the new pariſh, which uſually were the property of the vicar of the old pariſh, ſhall be continued to him and his ſucceſſors.

Sect. 12. The miniſter and his ſucceſſors, and other perſons having occaſion to go to the houſe built for the miniſter, ſhall have liberty to paſs through the church-yard, by ſuch road as the veſtry ſhall appoint; which road ſhall not be leſs than twenty feet wide, from *Butt-lane* to the miniſter's houſe.

Sect. 13. The proviſions hereby made for the miniſter, *&c.* ſhall be the annual maintenance of the rector of the ſaid church, over and above ſurplice-fees, and the houſe for his habitation; and over and above all gifts to him; but no ſurplice-fees upon burials ſhall be demanded, unleſs where he ſhall be requeſted to perform the burial office, or part thereof, in the church, and the corpſe be carried into the church, then only ſuch fees as ſhall be ſettled by the veſtry, with the allowance of the ordinary; who are to ſettle all fees payable to each officer belonging to the church.

Sect. 15. When the vicarage of the old pariſh church ſhall become vacant, the firſt rector of the new church ſhall be nominated by his Majeſty; and all ſucceeding rectors of the new church ſhall be preſented by the patron of the old church.

Sect.

Sect. 16. The rectory of the new pariſh ſhall not be held *in commendam.*

Sect. 17. The churchwardens ſhall provide three palls for burying the dead in the church-yard or vaults under the church, and ſhall take for the uſe of them not exceeding *ten ſhillings*; and no perſon ſhall bring any pall into the church-yard without paying to the churchwardens, not exceeding *ten ſhillings*, which ſhall be applied as the veſtry ſhall appoint.

Sect. 19. All donations that have been given to the pariſh of St. *Nicholas*, *Deptford*, ſhall be equally divided, for the benefit of the old pariſh and the new.

Sect. 21. All rates for the poor of both pariſhes ſhall be raiſed by two moieties, *viz.* one out of the old pariſh, and the other out of the new; and the work-houſe and houſe of correction is to be for the joint uſe of both pariſhes.

Sect. 22. The two pariſhes ſhall be jointly ſubject for repairing the roads in the upper part of the pariſh of *Deptford*, which is a diſtrict for the new pariſh.

Sect. 23. If any action be commenced for any thing done in purſuance of this act, the defendant may plead the general iſſue.

Sect. 24. This act ſhall be a public act.

Sect. 26. All glebe-land that did belong to the pariſh of St. *Nicholas*, *Deptford*, ſhall be veſted in the church-wardens of the new pariſh, to be applied towards raiſing the *ſeventy pounds per annum*, to be paid by the churchwardens to the rector of the new pariſh.

Stat. 4 Geo. 2. cap. 20. ſect. 1.

Stat. 4 *Geo.* 2. *cap.* 20. *ſect.* 1. The church of *Graveſend* ſhall be rebuilt as one of the fifty new churches directed to be built by the acts 9 *Ann. c.* 22. and 10 *Ann. c.* 11. and it ſhall be lawful for the commiſſioners to pay *five thouſand pounds*, to be diſpoſed of according to the direction of the mayor of *Graveſend* and others, truſtees for rebuilding the ſaid pariſh-church.

Stat.

Stat. 5 *Geo.* 2. *cap.* 4. *ſect.* 1. The church of *Woolwich* ſhall be rebuilt as one of the fifty new churches; and it ſhall be lawful for the commiſſioners to pay 8000*l.* according to the direction of the right honourable the lord *Vere Beauclerk* and others, truſtees for rebuilding the ſaid church. Stat. 5 Geo. 2. cap. 4. ſect. 1.

Stat. 6 *Geo.* 2. *cap.* 8. *ſect.* 1. The church of St. *George the Martyr* in *Southwark* ſhall be rebuilt as one of the fifty new churches; and the commiſſioners are required to pay *ſix thouſand pounds* to the order of the right honourable the earl of *Ailsford* and others, truſtees for rebuilding the ſaid church. Stat. 6 Geo. 2. cap. 8. ſect. 1.

Stat. 6 *Geo.* 2. *cap.* 11. *ſect.* 1. The ſum of 3500*l.* part of the monies intended by act 1 *Geo.* 1. *cap.* 23. to be applied for the making proviſion for the miniſters of the fifty new churches, ſhall be allotted for the ſhare which the rector of the new pariſh church near *Horſleydown* (taken out of St. *Olave*'s pariſh) ſhall have; and the treaſurer of the commiſſioners is to lay out the ſaid ſum in purchaſing lands. Stat. 6 Geo. 2. cap. 11. ſect. 1.

Sect. 2. Out of the money appropriated for building the ſaid fifty new churches, there ſhall be iſſued ſuch ſums, not exceeding *one thouſand one hundred pounds*, as ſhall be neceſſary for building a dwelling-houſe for the miniſter; and for paving the church-yard, and ſetting up gates and rails, *&c.*

Sect. 6. It ſhall be lawful for the churchwardens of the ſaid old and new pariſhes reſpectively, to make vaults, and ſet up monuments and grave-ſtones in the church-yards; and for the churchwardens of the new pariſh to ſet up ſuch monuments in the new church, and depoſit corpſe in the ſame, without hindrance of the miniſter.

Sect. 7. The churchwardens of the new pariſh ſhall pay, out of any pariſh-monies in their hands unto the miniſter, the yearly ſum of *ſixty pounds*, without deduction of taxes, at the four uſual feaſts.

Sect. 11. The miniſter, and all other pariſhioners occupying tenements of the yearly value of *ten pounds*, as

the ſame ſhall be rated to the land-tax, ſhall be veſtrymen, and ſhall meet from time to time, upon public notice read in the church, by order of the miniſter, churchwardens, and overſeers, or either of them, on the Lord's day next preceding, after divine ſervice; and the ſaid veſtrymen ſhall elect churchwardens and other officers, and elect and put out the ſexton, grave-diggers, and all other officers and ſervants to be employed in opening the pews, or otherwiſe about the church, and exerciſe the ſame powers as they might have done in caſe they had been named veſtrymen by the commiſſioners; and may elect a lecturer if they think fit.

Sect. 12. The diſtrict ſet out for a new pariſh ſhall be a diſtinct pariſh from the pariſh of St. *Olave's, Southwark*, and ſhall be diſcharged as well againſt the miniſter of the new church, as againſt the rector of St. *Olave's*, from *Eaſter* offerings; and alſo to be exempted from all other dues payable to the rector of St. *Olave's.*

Sect. 13. The proviſions hereby made for the miniſter of the new church ſhall be in lieu of all *moduſes, Eaſter* offerings, and other demands; excepting ſuch ſurplice-fees, and other perquiſites as he ſhall be allowed by this act to receive; and ſuch other fees and perquiſites as the veſtry, with the allowance of the ordinary, ſhall appoint.

Sect. 15. The rectory of the new intended pariſh ſhall not be taken or held *in commendam.*

Sect. 16. The churchwardens ſhall provide three palls for burying the dead, and ſhall for the uſe of the ſame demand any ſum not exceeding *ten ſhillings*, nor leſs than *two ſhillings*; and no perſon ſhall bring any pall into the church-yard, unleſs ſuch perſon ſhall pay to the churchwardens ſuch ſum as they ſhall demand, not exceeding *ten ſhillings*; which ſums ſo taken ſhall be applied as the veſtry ſhall appoint; provided that the palls belonging to St. *Olave's* may be uſed at any funeral in the burying places that are to be uſed in common between the old and new pariſhes, without

paying

paying any fee to the churchwardens of the new pariſh.

Sect. 18. All the burying grounds within the old and new pariſhes ſhall be held in common between both pariſhes, and the ſurplice-fees for burials of perſons, dying within the old pariſh, where the ſervice ſhall be performed by the miniſter of the old pariſh, or any other officiating for him, ſhall be paid to the rector of the old pariſh; and ſurplice-fees for perſons dying within the new pariſh, where the ſervice ſhall be performed by the miniſter of the new pariſh, ſhall be paid to the rector of the new pariſh; and all other fees ſhall be paid to the churchwardens of ſuch of the diſtricts where the perſon buried did reſide; provided, that if any ſtranger ſhall be buried in either of the ſaid pariſhes, the fees for palls, and the burial fees, ſhall be equally divided between the two pariſhes.

Sect. 19. The inhabitants of the new pariſh ſhall be intitled, in common with the inhabitants of the old pariſh, to all benefits ariſing from the free ſchool.

Sect. 20. All donations that have been given to the pariſh of St. *Olave's*, *Southwark*, ſhall be divided in manner following, *viz. three fifths* for the old pariſh, and out of the other *two fifths* there ſhall be paid to the churchwardens of the old pariſh the yearly ſum of *twenty-nine pounds*, free from taxes, for the benefit of the poor, and the reſidue of ſaid the *two fifths* ſhall be for the benefit of the new pariſh.

Sect. 21. The rector, and ſenior churchwarden, of each of the pariſhes ſhall jointly collect the ſeveral charities and donations; and ſhall, with the conſent of the veſtry of each pariſh, make leaſes of the lands and tenements given for the charitable purpoſes in ſuch gifts and donations mentioned, as the churchwardens of St. *Olave's*, *Southwark*, might have done.

Sect. 22. The ſeveral churchwardens ſhall give half yearly accounts of the charities to any two juſtices of the peace for *Surry*, not being inhabitants of either of the pariſhes, within *ten days* after the feaſt of the An-

nunciation and St. *Michael*; and in caſe they ſhall not appear upon ſummons, the juſtices may iſſue a warrant for bringing the party offending before ſuch juſtice; and in caſe the party ſhall refuſe to account, ſuch juſtice may commit the perſon ſo refuſing to the county gaol till he ſhall have accounted; and in caſe the party accounting ſhall neglect to pay the money in his hands as the juſtices ſhall direct, it ſhall be lawful for ſuch juſtices to iſſue warrants for levying the ſame on the goods of the offender, and to cauſe ſale to be made thereof, in caſe they ſhall not be redeemed within *four days*; and where goods of ſuch offender cannot be found, to commit ſuch offender to the county gaol, till ſuch money be paid, or until the major part of the veſtry ſhall deſire that the offender be diſcharged; but the party ſhall be at liberty to appeal to the next quarter-ſeſſions.

Sect. 23. The workhouſe and furniture, and the ground adjoining, ſhall be divided, *viz. three fifth* parts ſhall be the property of the old pariſh, and the other *two fifths* the property of the new pariſh, ſubject to the yearly rent of *a pepper-corn*, payable to the truſtees of the free-ſchool of St. *Olave's, Southwark*; and all perſons who ſhall obtain any ſettlement in that part of the workhouſe which ſhall be allotted to the old pariſh, ſhall be maintained by the old pariſh.

Sect. 26. If any action ſhall be commenced for any thing done in purſuance of this act, the defendant may plead the general iſſue.

Sect. 27. This act ſhall be a public act.

Stat. 6 Geo. 2. cap. 21. ſect. 1.

Stat. 6 Geo. 2. c. 21. ſect. 1. The ſum of 3500*l.* part of the monies applied for making proviſion for the miniſters of the fifty new churches, ſhall be allotted for the rector of the new church in *Old-ſtreet*.

Sect. 2. Towards raiſing the yearly ſum of 120*l.* agreed to be raiſed within the Lordſhip part of the pariſh of *Cripplegate*, for the maintenance of ſuch rector, there ſhall be paid to the churchwardens of the new pariſh, upon the burial of any perſon in the church-

yards

yards of the new pariſh, ſuch ſum of money as the veſtrymen ſhall, with the allowance of the ordinary, appoint; and for the liberty of making a vault, or ſetting up any monument, or grave-ſtone, ſuch money as the veſtrymen ſhall appoint; and it ſhall be lawful to depoſit any corpſe in the vaults under the church or ſteeple, ſo as the floor of ſuch vault be not broke.

Sect. 4. The churchwardens ſhall pay out of any pariſh monies in their hands, unto ſuch rector, the yearly ſum of *one hundred and twenty pounds*, without deduction for taxes, at the four uſual feaſts.

Sect. 9. The rector, churchwardens, and overſeers for the poor of the ſaid new pariſh, and all other perſons who have ſerved, or paid fines for offices for the ſaid diſtrict or new pariſh, ſo long as they continue houſeholders within the pariſh, and pay to the poor's rate, ſhall be the veſtrymen of the ſaid pariſh; and the ſaid veſtrymen may elect a lecturer, as alſo churchwardens, ſideſmen, and all other officers for the pariſh; and alſo elect, and put out, the ſexton, grave-diggers, and other officers and ſervants.

Sect. 14. When the vicarage of the old pariſh church ſhall become vacant, the firſt rector of the new church ſhall be nominated by his Majeſty, and all ſucceeding rectors of the ſaid new church ſhall be collated by the dean of St. *Paul's, London.*

Sect. 16. All charities and donations that have been given to the pariſh of St. *Giles, Cripplegate*, ſhall be enjoyed by the vicar or churchwardens of the preſent pariſh of St. *Giles, Cripplegate*, and the church-wardens of the new intended pariſh, by ſuch proportions as they were before.

Sect. 17. The burying-ground called *The Bear and Ragged-ſtaff* burying-ground, ſhall be to the ſole uſe of the old pariſh.

Sect. 19. The highways ſhall be repaired as by the laws now in being; and all money which ſhall be expended in repairing the ſame, ſhall be paid in the

proportions following, *viz. five eight parts* by the new intended pariſh, and the other *three eight parts* by the old pariſh, commonly called the Freedom part.

Sect. 20. The pariſh clerk of the new pariſh ſhall be a member of the corporation of maſters, wardens, aſſiſtants, and brethren of the pariſh-clerks.

Sect. 24. After the clerk's place of the old pariſh ſhall become vacant, the rector of the new pariſh ſhall pay to the vicar of the old pariſh of St. *Giles, Cripplegate*, the yearly ſum of *ten pounds*, without deduction of taxes, at the four uſual days of payment; and in caſe any of the payments ſhall be behind *twenty-one days*, the vicar may ſue for the ſame againſt ſuch rector by action of debt.

Stat. 6 Geo. 2. cap. 25. ſect. 20.

Stat. 6 *Geo.* 2. *cap.* 25. *ſect.* 20. It ſhall be lawful for the commiſſioners of the treaſury to pay out of the monies reſerved for building *fifty* new churches, unto the ſubdean, treaſurer, and ſteward of the collegiate church of St. *Peter, Weſtminſter, four thouſand pounds*, for the repair of the ſaid Collegiate church, and alſo to pay to the ſaid ſubdean, treaſurer, and ſteward, the further ſum of *one thouſand two hundred pounds* for finiſhing the dormitory.

CHAP.

CHAP. IX.

A table of monaſteries, abbeys, &c. exempt from tythes, being diſſolved by ſtat. 31 *Hen.* 8.

A TABLE of monaſteries of the yearly value of 200 *l.* or upwards, diſſolved by ſtatute of 31 H. 8. referred to in page 18 of this work.

Note. The lands belonging to theſe religious houſes were diſcharged from tythes.

Bedfordſhire.

Monaſteries.	*Order.*	*Founded.*	*Value.*		
			l.	*s.*	*d.*
Newham, pr.	C. Auſt.	T. Hen. 1.	293	15	11
Elmiſton, ab.	Ben.	T. W. Conq.	285	12	10
Warden, ab.	Ciſt.	1139. —	389	16	6
Chickſand, pr.	Wh. C. Gill.	T. W. Rufus.	212	3	5
Dunſtable, ab.	C. Auſt.	T. Hen. 1.	344	13	3
Wooburn, ab.	Ciſt.	T. John.	391	18	2

Berkſhire.

Reading,	Ben.	T. Hen. 1.	1938	14	3
Buſleſham, ab.	C. Auſt.	13 Ed. 3.			
Abington, ab.	Ben.	720			

Buckinghamſhire.

Aſhrugg coll.	C. Auſt.	T. Edw. 1.	416	16	4
Noteley, ab.	C. Auſt.	1112. —	437	6	8
Miſſenden, ab.	Ben.	1293. —	261	14	6

Cambridgeſhire.

Monaſteries.	Order.	Founded.	Value. l.	s.	d.
Thorney, ab.	Ben.	972. —	411	12	11
Barewell, pr.	C. Auſt.	1092. —	256	11	10

Cheſhire.

St. Worburge, ab.	Ben.	1095. —	1093	5	11
Combermeer, ab.	Ciſt.	1134. —	225	9	7

Cornwall.

Bodmin, pr.	C. Auſt.	936. —	270	0	11
Launceſton, ab.	C. Auſt.	T. W. Conq.	354	9	11
St. Germain's, ab.	C. Auſt.	T. Ethelſtan.	243	8	0

Cumberland.

Carliſle, pr.	C. Auſt.	T. W. Rufus.	418	3	4
Holme Coltrom. ab.	Ciſt.	1135. —	427	19	3

Derbyſhire.

Darly, ab.	C. Auſt.	T. H. 2.	258	14	5

Devonſhire.

Ford, ab.	Ciſt.	1133. —	374	10	6
Newnham, ab.	Ciſt.	ab. 1246.	227	7	8
Dinkeſwell, ab.	Ciſt.	1201. —	294	18	6
Hertland, ab.	C. Auſt.	T. H. 2.	306	3	2
Torre, ab.	Præm.	T. Ric. 1.	396	0	11
Buckfaſt, ab.	Ciſt.	T. H. 2.	466	11	2
Plimpton, ab.	Ciſt.	T. Edw. 1.	241	17	9
Taviſtock, ab.	Ben.	961. —	902	5	7
Exon, pr.	Clun.	T. Hen. 1.	502	12	9

Dorsetshire.

Monasteries.	*Order.*	*Founded.*	*Value.* l.	s.	d.
Abbotsbury,	Ben.	ab. 1016.	390	19	2
Middleton, ab.	Ben.	T. Ethelstan.	538	13	11
Tarrent, ab.	Cist.	By Henry 3.	214	7	9
Stafton, ab.	Ben.	941. —	1166	8	9
Cerne, ab.	Ben.	T. Edgar.	515	17	10
Sherburn, ab.	Ben.	ab. 370. —	682	14	7

Durham.

S. Cuthbert, ab.	Ben.	ab. 842.	1366	10	9
Tinmouth, pr.	Ben.	— —	397	11	5

Essex.

Berking, ab.	Ben.	680. —	862	12	5
Stratford Langthorn, ab.	Cist.	1135. —	511	16	3
Waltham, ab.	C. Aust.	ab. 1060.	900	4	3
Walden, ab.	Ben.	1136. —	372	18	11
St. Osith, ab.	C. Aust.	1120. —	677	1	2
Colchester, ab.	C. Aust.	T. Hen. 1.	523	17	0

Gloucestershire.

Bristol, ab.	C. Aust.	T. Hen. 1.	670	13	11
Hayles, ab.	Cist.	1246. —	357	7	8
Winchcomb, ab.	Ben.	787. —	759	11	9
Tewkesbury, ab.	Ben.	715. —	1598	1	5
Cirencester, ab.	C. Aust.	T. H. 1.	1051	7	11
King's-wood, ab.	Cist.	1139. —	244	11	2
Gloucester, ab.	Ben.	680. —	1946	5	9
Lanthony, pr.	C. Aust.	1136. —	641	19	11

Hamp-

Hampſhire.

Monaſteries.	Order.	Founded.	Value. l.	s.	d.
St. Swithin's Winton, ab.	Ben.	634. —	1507	17	2
Hyde, ab.	Ben.	by Alfred.	865	18	0
Wherwell, ab.	Ben.	by Edgar.	339	8	7
Romſey, mon.	Ben.	907. —	393	10	10
Twinham, pr.	C. Auſt.	before 1043.	312	7	0
Bellococo, ab.	Ciſt.	1024. —	326	13	2
Southwick, pr.	C. Auſt.	T. H. 1.	257	4	4
Titchfield, ab.	Præm.	T. H. 3.	249	16	1

Hertfordſhire.

St. Alban's, ab.	Ben.	755. —	2102	7	1

Huntingdonſhire.

St. Neot's, ab.	Ben.	ab. T. Hen. 3.	241	11	4
Ramſey, ab.	Ben.	969. —	1716	12	4

Kent.

St. Auſtin's, Cant.	Ben.	605. —	1413	4	11
Ledis, pr.	C. Auſt.	1119. —	362	7	7
Feverſham, ab.	Clun.	1147. —	286	12	6
Boxley, ab.	Ciſt.	1144. —	204	4	11
Roffen, ab.	Ben.	600. —	486	11	5
Mallin, ab.	Ben.	by Edmund.	218	4	2
Dartford, ab.	C. Auſt.	1372. —	380	0	0

Lancaſhire.

Whalley, ab.	Ciſt.	1172.	321	9	1

Leiceſter-

Leiceſterſhire.

Monaſteries.	*Order.*	*Founded.*	*Value.* *l.*	*s.*	*d.*
Leiceſter, ab.	C. Auſt.	1143.—	951	14	5
Croxdon, ab.	Præm.	ab. R. 1.	381	0	10
Launda, ab.	C. Auſt.	T. W. Rufus.	399	3	3

Lincolnſhire.

Lincoln, St. Cath. pr.	Gilb.	T. H. 2.	202	5	0
Kirkſteed, ab.	Ciſt.	1139.—	286	2	7
Reveſly, ab.	Ciſt.	1142.—	287	2	4
Thorton, ab.	C. Auſt.	1139.—	594	17	10
Barney, ab.	Ben.	712.—	366	6	1
Croyland, ab.	Ben.	716.—	1803	15	10
Spalding, ab.	Ben.	1052.—	761	8	11
Sempringham, ab.	Gilb.	1148.—	317	4	1
Epworth, mon.	Carth.	1386.—	237	15	1

London and Middleſex.

St. John Jeruſalem,	——	1000.—	2385	12	8
St. Barth. Smithfield,	C. Auſt.	1102.—	653	15	0
St. Mary Biſhopſgate,	pr.	1187.—	478	6	6
Clerkenwell, pr.	Ben.	T. Stephen.	262	19	0
London minors,	Ben.	T. Edw. 1.	318	8	5
Weſtminſter, ab.	Ben.	T. Edgar.	3471	0	2
Sion, ab.	C. Auſt.	by Hen. 5.	1731	8	4
London, a houſe of,	Carth.	T. Edw. 3.	642	0	4
St. Clare without Aldgate, mon.	——	1292.—	418	8	5
St. Mary, Charterhouſe, mon.	Carth.	1379.—	736	2	7
St. John, Holiwell,	Bl. M.	1318.—	347	1	4
St. Mary Eaſt-Smithfield, ab.	Ciſt.	1360.—	602	11	10

Norfolk.

Norfolk.

Monaſteries.	*Order.*	*Founded.*	*Value.*		
			l.	*s.*	*d.*
Thetford, ab.	Clun.	1103.—	312	14	4
Wymundham, ab.	Ben.	1139.—	211	16	6
Hulmo, ab.	Ben.	by Canute.	583	17	0
Weſtderham, ab.	Præm.	T. Hen. 2.	228	0	9
Walſingham, ab.	C. Auſt.	ab. T. Stephen.	391	11	6
Caſtle-acre, ab.	Clun.	1090.—	306	11	4
Weſt-acre, ab.	Clun.	T. W. Rufus.	260	13	7

Northamptonſhire.

Burg. St. Peter, ab.	Ben.	by Roſerek of Mercia.	1721	14	0
Pipewell, ab.	Ciſt.	1143.—	286	11	8
St. Andrew's, pr.	Clun.	1067.—	263	7	1
Sulby, ab.	Præm.	T. Stephen.	258	8	5

Nottinghamſhire.

Lenton, pr.	Clun.	T. H. 1.	329	5	10
Thuragarton, pr.	C. Auſt.	T. H. 1.	259	9	4
Welbeck, ab.	C. Auſt.	T. Stephen.	249	6	3
Warſop, pr.	C. Auſt.	— —	239	10	5
Bella Valla, pr.	Carth.	ab. 16 Ed. 3.	227	8	0
Newſtead, pr.	C. Auſt.	T. Ed. 3.	219	18	8

The two laſt are undervalued in Dugdale, but thus by Speed.

Northumberland.

Tinmouth, a cell to St. Alban's, a nunnery,			511	4	1

Oxfordſhire.

Godſtow, ab.	Ben.	T. Stephen.	274	5	10
Eyneſham, ab.	Ben.	by Etheldred	441	12	2
Oſney, ab.	Ciſt.	T. H. 1.	654	10	2
Thame, ab.	Ciſt.	T. H. 1.	256	13	11
Oxford, pr.	— —	before Conq.	224	4	8
Dorcheſter, ab.	C. Auſt.	635.—	219	12	0

Shropshire.

Monasteries.	*Order.*	*Founded.*	*Value.* *l.*	*s.*	*d.*
Haghmond, ab.	C. Aust.	1100.—	259	13	7
Lilleshull, ab.	C. Aust.	by Elfledak of Mercia.	229	3	1
Wigmore, ab.	C. Aust.	1172. —	267	2	10
Wenlock, pr.	Clun.	1181 or before.	491	9	7
Salop, ab.	C. Aust.	1081. —	615	4	3
Hales Owen, ab.	Præm.	T. John.	337	15	6

Somersetshire.

Glassenbury, ab.	Ben.	about 300.	3311	7	4
Brewton, ab.	C. Aust.	ab. T. Conq.	439	6	8
Henton, pr.	Carth.	T. Hen. 3.	248	19	2
Witham, pr.	Carth.	by Hen. 2.	215	15	0
Taunton, pr.	C. Aust.	T. Hen. 1.	286	8	10
Bath, pr.	Ben.	T. Hen. 3.	617	2	3
Keynesham, ab.	C. Aust.	T. Hen. 1.	419	14	3
Michelney, ab.	Ben.	740. —	447	4	11
Backland, pr.	Cist.	T. Edw. 1.	223	7	4

Staffordshire.

Dela Cres, ab.	Cist.	1153.—	227	5	9
Burton-upon-Trent,	Ben.	T. Eadred.	267	14	3
Croxden, ab.	Cist.	— —	—	—	

Suffolk.

St. Edmunsbury, ab.	Ben.	1020.—	1659	13	11
Butley, ab.	C. Aust.	1171.—	318	17	2
Sibeton, ab.	Cist.	1150.—	250	15	7
Ixworth, ab.	C. Aust.	T. W. Conq.	280	9	5

Surrey.

Monaſteries.	*Order.*	*Founded.*	*Value.*		
			l.	*s.*	*d.*
Merton, pr.	C. Auſt.	1414.—	957	19	5
Shene, pr.	Carth.	1414.—	777	12	0
Chertſey, ab.	Ben.	666.—	659	15	8
Newark, pr.	——	— —	258	11	11
St. Maryovers, ab.	C. Auſt.	1106.—	625	6	6
Burmundſey, ab.	C. Auſt.	1106.—	474	14	4

Suſſex.

Lewis, ab.	Clun.	T. W. Rufus.	920	4	6
Robert's Bridge, ab.	Ciſt.	T. Hen. 2.	248	10	6
Bataille, ab.	Bl. M.	1066.—	987	0	11

Warwickſhire.

Combe, ab.	Ciſt.	T. Stephen.	311	15	1
Kenelworth, ab.	C. Auſt.	T. Hen. 1.	538	19	0
Meryval, ab	Ciſt.	1148.—	254	1	8
Nuneaton, mon.	Ben.	T. Hen. 2.	253	14	5

Wiltſhire.

Malmſbury, ab.	Ben.	ab. 670.—	803	17	7
Bradonſtoek, pr.	C. Auſt.	T. W. Conq.	212	19	3
Edington, pr.	C. Auſt.	1352.—	442	19	7
Ambreſbury, ab.	Ben.	1177.—	494	15	2
Wilton, ab.	Ben.	T. Ethelwolf.	601	1	1
Fairly, a cell to Lewis,	Clun.	1125.—	217	0	4
Laycock, ab.	C. Auſt.	1232.—	203	12	3

Worceſterſhire.

Malverne, ab.	Ben.	1083.—	308	1	9
Eveſham, ab.	Ben.	T. Offa.	1183	12	3
Perſhore, ab.	Ciſt.	— —	643	4	5
Hales Owen, ab.	Præm.	T. John.	282	13	4
Bordeſly, ab.	Ciſt.	1138.—	388	1	1

York-

Yorkſhire.

Monaſteries.	*Order.*	*Founded.*	*Value.* *l.*	*s.*	*d.*
St. Mary, York, ab.	Ben.	1088.—	1550	7	0
Selby, ab.	Ben.	T. W. Conq.	720	12	10
Kirkſtal, ab.	Ciſt.	1147.—	329	2	11
De Rupe, ab.	Ciſt.	1147.—	224	2	5
Monks Burton, ab.	Clun.	ab. 1186.	239	3	6
Noſtel, ab.	C. Auſt.	T. Hen. 1.	492	18	2
Pomfrait, ab.	Clun.	T. W. Conq.	237	14	8
Giſbourn, ab.	C. Auſt.	T. Stephen.	628	3	4
Whitby, ab.	Ben.	T. W. Conq.	437	2	9
Montegratia, ab.	Carth.	ab. 1396.	323	2	10
Newburge, pr.	C. Auſt.	1145.—	367	8	3
Belland, ab.	Ciſt.	1134.—	238	9	4
Kirkham, ab.	C. Auſt.	T. Hen. 1.	269	5	9
Melſa, ab.	Ciſt.	1136.—	299	6	4
Brilington, ab.	C. Auſt.	T. Hen. 1.	547	6	11
Walton, ab.	Gilb.	T. Stephen.	360	16	10
Bolton in Craven, pr.	C. Auſt.	T. Hen. 1.	212	3	4
Rival, ab.	Ciſt.	1132.—	278	10	2
Jerval, ab.	Ciſt.	T. Stephen.	234	18	5
Furnes, ab.	Ciſt.	1127.—	805	16	5
De Fontibus,	Ciſt.	1132.—	998	6	8
Warter, pr.	C. Auſt.	T. Hen. 1.	221	3	10
Richal.	— —	T. Stephen.	257	7	0
St. Michael near Hull,	Carth.	1377.—	231	17	3

In Wales.

Valle de Sancta Cruce in Denbighſhire,	Ciſt.	T. Edw. 1.	214	3	5
Strata Florida in Cardiganſhire,	Ciſt. or Clun.	T. W. Conq.	1226	6	0

N. B. Ab. *Abbey*; pr. *Priory*; C. Auſt. *Canons of St. Auſtin*; Bl. M. *Black Monks*; Wh. C. *White Canons*; Ben. *Benedictines*; Gilb. *Gilbertines*; Præm. *Præmonſtratenſes*; Carth. *Carthuſians*; Mon. *Monks*; Clun. *Cluniacks*; Ciſt. *Ciſtercians*; T. *in the time of*; ab. *about the year.*

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